

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

REGULAR PUBLIC MEETING

+ + + + +

THURSDAY
MARCH 13, 2003

+ + + + +

The Regular Meeting of the District of Columbia
Zoning Commission convened at 6:30 p.m. in the Office
of Zoning Hearing Room at 220, 441 4th Street, N.W.,
Washington, D.C. 20001, Carol J. Mitten, Chairperson,
presiding

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairman
JAMES HANNAHAM	Commissioner
PETER MAY	Commissioner
JOHN PARSONS	Commissioner

COMMISSION STAFF PRESENT:

ALBERTO BASTIDA
SHARON SANCHEZ

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
ELLEN MCCARTHY
JOEL LAWSON

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P-R-O-C-E-E-D-I-N-G-S

6:39 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Thursday, March 13, 2003. My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioners Peter May and James Hannaham, and we expect to be joined by Commissioner John Parsons momentarily.

We have two cases this evening, and there are different rules of procedure for each, so I'll have a separate announcement for each, and we'll take up the Sibley Memorial Hospital case first.

The first hearing this evening is Zoning Commission Case No. 02-29. This is a request by Lucy Webb Hayes National Training School for Deaconesses and Missionaries doing business as Sibley Memorial Hospital for a Zoning Map Amendment under Chapter 30 of the District of Columbia Zoning Regulations, 11 DCMR, for property known as Square 1448 North, Lot 803.

Notice of today's hearing was published in the D.C. Register on January 17, 2003 and in the Washington Times on January 23, 2003. This hearing,

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1 the first hearing, will be conducted in accordance
2 with the provisions of 11 DCMR section 3022, and those
3 are the procedures for contested cases. Copies of the
4 hearing announcement are available to you and are
5 located on the table near the door.

6 The order of procedure for the first
7 hearing will be as follows: Preliminary matters
8 followed by the petitioners presentation, reports of
9 other Government agencies, that would include the
10 Office of Planning, the report of the affected ANC, in
11 this case it's ANC 3D, organizations and persons in
12 support, organizations and persons in opposition, and
13 then any rebuttal by the applicant.

14 The following time constraints will be
15 maintained in the first hearing. The petitioner will
16 have up to 20 minutes, individuals will have three
17 minutes, organizations will have five minutes. The
18 Commission intends to maintain these time limits as
19 strictly as possible in order to hear the case in a
20 reasonable period of time. The Commission reserves
21 the right to change the time limits for presentations,
22 if necessary, and notes that no time shall be seated.

23 All persons appearing before the
24 Commission are to fill out two witness cards. Those
25 cards are also on the table near the door. Upon

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1 coming forward to speak to the Commission, please,
2 give both cards to the reporter, who is sitting to our
3 right.

4 The decision of the Commission in this
5 case must be based on the public record. To avoid any
6 appearance to the contrary, the Commission requests
7 that persons present not engage the members of the
8 Commission in conversation during a recess or at any
9 other time. Staff will be available throughout the
10 hearing to discuss procedural questions, so you can
11 direct any questions to Mr. Bastida or Ms. Sanchez.

12 Please, turn off all beepers and cell
13 phones, at this time, so as not to disrupt these
14 proceedings. At this time, the Commission will
15 consider any preliminary matters related to the first
16 case.

17 Mr. Bastida?

18 MR. BASTIDA: Madam Chairman, the
19 applicant didn't post the site until 30 days prior to
20 the hearing. He should have posted it 40 days. There
21 were other ways to advise the community that, in fact,
22 this hearing was taking place like the newspaper, the
23 Register and people within a 200 foot radius.
24 Accordingly, the staff request that you waive the
25 rules of the 40 days for advertisement of the hearing.

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1 CHAIRPERSON MITTEN: But it was advertised
2 for 30? It was posted for 30?

3 MR. BASTIDA: It was posted for 30 days
4 prior to the hearing date.

5 CHAIRPERSON MITTEN: All right. Is there
6 any objection to waiving our rules and proceeding at
7 this time? Okay. Without objection then.

8 MR. BASTIDA: There is a second
9 preliminary matter.

10 CHAIRPERSON MITTEN: All right.

11 MR. BASTIDA: The applicant has not filed
12 a maintenance of posting. The applicant could address
13 that he has maintained the posting as shown, and then
14 can provide an affidavit attesting to such action.

15 CHAIRPERSON MITTEN: All right. Would you
16 like to do that, at this time, and, please, identify
17 yourself.

18 MR. ELLIS: Good evening, Madam Chair.

19 CHAIRPERSON MITTEN: Good evening.

20 MR. ELLIS: And members of the Board. My
21 name is Craig Ellis and I'm counsel for Sibley
22 Hospital. The applicant has maintained the posting as
23 Mr. Bastida has stated. We are more than willing to
24 bring in the --

25 CHAIRPERSON MITTEN: Affidavit?

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1 MR. ELLIS: The affidavit. We could have
2 it in by tomorrow. It was just a mistake that when we
3 were talking, we filed the -- the posting affidavit,
4 but we forgot to file the maintenance of posting.

5 CHAIRPERSON MITTEN: I understand.

6 MR. ELLIS: So and the individual that
7 maintained it is here this evening, and we also --
8 there's a member of the community here that can attest
9 that it was maintained.

10 CHAIRPERSON MITTEN: Okay. If you could
11 just follow-up with submitting the affidavit tomorrow,
12 that would be great.

13 MR. ELLIS: We will have it down here
14 tomorrow morning.

15 CHAIRPERSON MITTEN: Okay.

16 MR. ELLIS: All right.

17 CHAIRPERSON MITTEN: Thank you.

18 Anything else, Mr. Bastida?

19 MR. BASTIDA: No, that concludes
20 preliminary, Madam Chairman.

21 CHAIRPERSON MITTEN: Thank you. Now,
22 anyone who is planning to testify in the first
23 hearing, please, rise to take the oath. The first
24 hearing only.

25 Ms. Sanchez?

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1 (The witnesses were sworn)

2 MS. SANCHEZ: Thank you.

3 CHAIRPERSON MITTEN: I think we're ready
4 to proceed, Mr. Ellis.

5 MR. ELLIS: Madam Chair, the applicant is
6 willing to stand on its papers, unless the Board has
7 any questions for us. We're willing to stand on that.

8 I think it's a very straightforward matter. You
9 know, in view of the magnitude of the case that's
10 coming behind it, we do not wish to hold this Board up
11 in any way.

12 CHAIRPERSON MITTEN: All right.

13 MR. ELLIS: I do have Mr. Price here who
14 is the COO for Sibley. I always get those CEO's and
15 COO's, but who is here and available to answer any
16 questions, if so needed, but if you don't need, we can
17 just submit on our papers.

18 CHAIRPERSON MITTEN: All right. Is that
19 fine with the Commission and we can just ask
20 questions?

21 VICE CHAIR HOOD: Yes, it is fine, Madam
22 Chairman.

23 CHAIRPERSON MITTEN: All right. All
24 right. Mr. Hood?

25 VICE CHAIR HOOD: Yes, I just wanted to

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1 ask you, Mr. Ellis, this issue about Little Falls
2 Road?

3 MR. ELLIS: Yes.

4 VICE CHAIR HOOD: First, if someone could
5 just point to me where it is, and actually what is it
6 used for? I know it's an easement, but what actually
7 was it being used for? If you could point to me now,
8 and then when you go back to the mike, you can tell me
9 what it was used for.

10 CHAIRPERSON MITTEN: I have a hand held
11 mike if you would like to use that as you are pointing
12 or you can just point.

13 MR. ELLIS: Okay. I will have Mr. Price,
14 who can give you -- I know what it's used for, but
15 I'll let Mr. Price, because he has more detail,
16 because he deals with it every day.

17 CHAIRPERSON MITTEN: All right.

18 MR. PRICE: I'm Jerry Price, chief
19 operating officer, of Sibley Hospital. Little Falls
20 Road is a road that cuts through from Delcardia
21 Parkway down to Macarthur Boulevard, and it was
22 property of the Army Corp of Engineers, and so when
23 the hospital purchased the property, we also purchased
24 the road. The road is open to public traffic.

25 As a matter of fact, the piece of Little

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1 Falls Road from Delcardia Parkway down to probably
2 about a third of the way where the heliport is, even
3 the covenant that we had before this required us to
4 maintain that. We have maintained and improved the
5 road over the years. It's available for the community
6 to use as a cut through, and I know there has been
7 concern expressed in the community that, you know, at
8 some time because it is, in effect, a private road
9 that we would shut it off. We have no intention of
10 doing that.

11 It's where all of our employees come and
12 go for their parking. So it's for our circulation.
13 It's where all of the ambulance traffic comes and goes
14 from the hospital.

15 VICE CHAIR HOOD: So that part of it, that
16 easement will remain in operation? It will remain?

17 MR. PRICE: Oh, the Little Falls Road will
18 remain in operation, correct.

19 VICE CHAIR HOOD: Okay. Thank you, Madam
20 Chair, that's all the questions I have.

21 CHAIRPERSON MITTEN: All right. Anyone
22 else, any questions? Okay. Thank you. Then we'll go
23 to the report from the Office of Planning.

24 MS. THOMAS: Good afternoon, Madam
25 Chairman, members of the Commission. I'm Karen Thomas

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1 presenting OP's recommendation for the approval of map
2 amendment for land owned by Sibley Hospital, which is
3 currently unzoned. The application was set down for
4 public hearing on October 28 to request that the
5 Commission consider assigning the R-5-A Zone District
6 to Lot 803, which joins the hospital to the north.

7 The Board of Zoning Adjustment approved a
8 variance to allow the hospital to extend their
9 oncology wing in Case 16654 in January 2001. This
10 wing encroaches on the land that has been purchased
11 from the U.S. Government. The Office of Planning
12 reviewed the proposed map amendment and concluded that
13 the R-5-A Zone is an appropriate designation, since
14 the proposed use is on restrictions under property
15 consistent with the R-5-A Zone District and the
16 comprehensive plan.

17 OP also notes that Little Falls Road is
18 kept as a perpetual road easement reserved in the fee
19 disposal of the overall lot, and the parking lot to
20 the east is deed restricted for parking purposes. In
21 conclusion, the Office of Planning recommends approval
22 of the proposed zoning of Lot 803, which extends the
23 zoning of the hospital to its adjoining property.
24 Thank you.

25 CHAIRPERSON MITTEN: Thank you. Any

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1 questions for the Office of Planning? This is pretty
2 straightforward, I think, and I think we're ready for
3 Mr. Finney.

4 MR. FINNEY: Thank you, Madam Chair.

5 CHAIRPERSON MITTEN: I need you to get on
6 the mike, though.

7 MR. FINNEY: Yes, ma'am. How's that?

8 CHAIRPERSON MITTEN: That's terrific.

9 MR. FINNEY: Thank you. I come here not
10 in opposition, but seeking clarification of certain
11 points, and I would like to pose them in the way of
12 questions, if I might, of the Sibley lawyer and of Ms.
13 Thomas.

14 Picking up on the theme that Mr. Hood
15 raised about the Little Falls Road, which incidentally
16 has a very interesting history, it once was the only
17 access to Little Falls from Tenleytown down to the
18 river, and it was a dirt wagon road that originally
19 was listed in the District that was called Washington
20 County, at that point.

21 Coming the Civil War there was a battery
22 up there, that was the access to Battery Vermont.
23 Then along came the Army engineers and Colonel Meigs,
24 one of the great geniuses of our city, and they bought
25 Delcardia for the waterworks, and in the process they

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1 picked up that portion of Little Falls Road. So since
2 the middle of the 19th Century, it has been an Army
3 engineered road.

4 When the property was sold to Sibley, in
5 principal, at any rate, the road transferred, the
6 ownership of the road transferred to Sibley. There
7 has been discussion with you by Ms. Thomas of an
8 easement, but I think we should find out what that
9 easement is. Is not the easement just for the Army
10 engineers?

11 CHAIRPERSON MITTEN: Just to move this
12 thing along, why don't we ask Mr. Price and Mr. Ellis
13 to come and sit at the table?

14 MR. FINNEY: Why not? Yes, sit up here.

15 CHAIRPERSON MITTEN: And then we'll just
16 get this all sorted out quickly.

17 MR. FINNEY: Yes.

18 MR. PRICE: The deed indicates that it is
19 an easement for their access. There is nothing in the
20 deed that says that the road is for public access.

21 CHAIRPERSON MITTEN: Okay. There's your
22 answer.

23 MR. FINNEY: That's my answer. So that
24 it's only the Army engineers have an easement and
25 right of access to use that road, because they have to

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1 get up to property up at the top of the hill. So one
2 of my points of clarification, and I think you've
3 already done it, Mr. Ellis, is to say that Sibley
4 intends to keep that road open to public use, and I
5 would like to get that answer on the record, at this
6 point.

7 MR. ELLIS: Yes.

8 MR. PRICE: I think I already answered
9 that.

10 CHAIRPERSON MITTEN: Yes.

11 MR. PRICE: Swore to that.

12 MR. FINNEY: If so --

13 CHAIRPERSON MITTEN: That's what Mr. Price
14 answered in response to Mr. Hood.

15 MR. ELLIS: Yes.

16 MR. FINNEY: So that is one point of
17 clarification. The second one, I'll try to be brief,
18 is with the addition of this 8.5 acres of land, which
19 they leased up until now. Would Sibley, as a matter
20 of right under R-5-A, is it?

21 CHAIRPERSON MITTEN: Yes.

22 MR. FINNEY: R-5-A, as a matter of right,
23 be able to put up new structures?

24 MR. ELLIS: You're asking us or you're
25 asking the Board?

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1 MR. FINNEY: Well, I'm asking --

2 CHAIRPERSON MITTEN: Mr. Finney, I can
3 answer that. Yes, they have all the rights to use of
4 the property as zoned R-5-A. It's not conditional.

5 MR. FINNEY: All right. Can I ask Mr.
6 Ellis whatever you call it, the FAR now in the 40
7 percent rule, could you build another building on that
8 campus, expanded campus without getting a special
9 exception?

10 MR. ELLIS: Under our present FAR?

11 MR. FINNEY: Yes.

12 MR. ELLIS: We could do additional
13 building on the campus, yes.

14 MR. FINNEY: Could you build a medical
15 office building on the campus without getting a
16 special exception?

17 MR. ELLIS: Depending on the size of the
18 medical office building, we may or we may not be able
19 to. And I'm not trying to --

20 MR. FINNEY: I know you're not. I know.

21 MR. ELLIS: -- box with you, but I mean,
22 that's not -- right now, that's not a project that's
23 in my office to do anyway.

24 MR. FINNEY: Well, I know that. I'm
25 sorry.

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1 CHAIRPERSON MITTEN: I think we just have
2 to stick with --

3 MR. FINNEY: What I'm trying to get at,
4 Madam Chairman, is this.

5 CHAIRPERSON MITTEN: Right.

6 MR. FINNEY: That the location of a
7 medical office building there would have significant
8 impact upon the neighborhood.

9 CHAIRPERSON MITTEN: I understand.

10 MR. FINNEY: And I am trying to establish
11 the point that they can't, just as a matter of right,
12 put in a medical office building, that it's something
13 that the community should be involved in in the
14 ultimate decision.

15 CHAIRPERSON MITTEN: Well, I believe a
16 medical office building in our R-5-A requires a
17 special exception, yes.

18 MR. ELLIS: It would, yes.

19 CHAIRPERSON MITTEN: So that --

20 MR. ELLIS: Yes.

21 CHAIRPERSON MITTEN: That would be in the
22 future, and you would have an opportunity.

23 MR. FINNEY: That's all right, but I want
24 to clarify that.

25 CHAIRPERSON MITTEN: Okay.

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1 MR. FINNEY: So as to protect our
2 interest.

3 CHAIRPERSON MITTEN: Okay.

4 MR. FINNEY: That's all that's on my mind.
5 I thank you very much.

6 CHAIRPERSON MITTEN: Okay.

7 MR. FINNEY: Good to see you again.

8 CHAIRPERSON MITTEN: Well, thanks for
9 coming down.

10 MR. FINNEY: Yes.

11 CHAIRPERSON MITTEN: Yes, good to see you,
12 too.

13 MR. FINNEY: See you Monday night.

14 CHAIRPERSON MITTEN: Looking forward to
15 it.

16 MR. FINNEY: Good.

17 CHAIRPERSON MITTEN: Thank you. Now, is
18 there anyone else who would like to testify regarding
19 this case?

20 VICE CHAIR HOOD: Madam Chair, let me just
21 ask Mr. Finney. We weren't clear on the ANC's vote or
22 their position.

23 CHAIRPERSON MITTEN: Oh, yes. Mr. Finney,
24 the --

25 VICE CHAIR HOOD: So I'm sorry you're left

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1 at the table, Mr. Finney, but we weren't clear on the
2 ANC's position. They voted unanimously, according to
3 the letter, for you to come represent them.

4 MR. FINNEY: That's right.

5 VICE CHAIR HOOD: But the ANC didn't take
6 a position then?

7 MR. FINNEY: No, sir. No, sir.

8 VICE CHAIR HOOD: Okay.

9 MR. FINNEY: They just deputized me to
10 come down and raise these questions of clarification.

11 VICE CHAIR HOOD: Okay. Okay.

12 MR. FINNEY: We weren't opposed.

13 VICE CHAIR HOOD: Right.

14 MR. FINNEY: And so on.

15 VICE CHAIR HOOD: Okay. Good.

16 MR. FINNEY: Just for the record for the
17 future.

18 VICE CHAIR HOOD: Okay.

19 MR. FINNEY: Thank you.

20 VICE CHAIR HOOD: Thank you.

21 CHAIRPERSON MITTEN: Thanks again. Sir?

22 MR. DEAN: Good evening, Madam Chairman,
23 members of the Commission. My name is Andrew Dean.
24 I'm a neighbor of Sibley Hospital. I live directly
25 across the street. I have since 1986. I'm very much

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1 in favor of the recommended zoning of the R-5-A. I
2 think it's very much in keeping with what the zoning
3 currently is, and it makes logical sense.

4 Sibley has been a wonderful neighbor.
5 They have been very supportive of the community in the
6 good work that they do, and have come before the
7 Commission any time that variances are requested. So
8 I would be most supportive of this zoning.

9 CHAIRPERSON MITTEN: Very good.

10 MR. DEAN: That's all I have to say.

11 CHAIRPERSON MITTEN: Okay. Any questions?
12 Okay. Thank you.

13 MR. DEAN: Thank you.

14 CHAIRPERSON MITTEN: Anyone else? Any
15 closing thoughts, Mr. Ellis?

16 MR. ELLIS: Madam Chair, we would just ask
17 for an expedited decision if at all possible.

18 CHAIRPERSON MITTEN: All right. I think
19 that we can propose the action tonight and then we'll
20 take final action as soon as we can, provided that we
21 would get the affidavit of maintenance.

22 MR. ELLIS: You'll have the affidavit
23 tomorrow.

24 CHAIRPERSON MITTEN: All right. Great.

25 MR. ELLIS: Thank you.

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1 CHAIRPERSON MITTEN: All right. Mr. Hood?

2 VICE CHAIR HOOD: Madam Chair, with that I
3 move that we approve proposed map amendment for the
4 zoning of Square N-1448, Lot 803 to the R-5-A Zone as
5 requested upon receiving all the information needed.

6 COMMISSIONER MAY: Second.

7 CHAIRPERSON MITTEN: Any discussion? All
8 those in favor, please, say aye. Aye.

9 ALL: Aye.

10 CHAIRPERSON MITTEN: Those opposed,
11 please, say no.

12 Ms. Sanchez?

13 MS. SANCHEZ: Yes, staff would record the
14 vote 4 to 0 to 1 approving proposed action in Case No.
15 02-29, Commissioner Hood moving, Commissioner May
16 seconding, and Commissioners Mitten and Hannaham in
17 favor, Commissioner Parsons not present, not voting.

18 CHAIRPERSON MITTEN: Thank you.

19 VICE CHAIR HOOD: Madam Chair, I said
20 information. I think I need to be more clear for the
21 record, and I think it's the affidavit of post is what
22 we're looking for.

23 CHAIRPERSON MITTEN: Affidavit of
24 maintenance.

25 VICE CHAIR HOOD: Maintenance. Okay.

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1 CHAIRPERSON MITTEN: Yes.

2 VICE CHAIR HOOD: Right.

3 CHAIRPERSON MITTEN: Thank you. If we're
4 all clear on that, on the Sibley case, then we're
5 concluded with that hearing, and I look forward to
6 seeing you next Monday, Mr. Finney.

7 MR. FINNEY: Thank you, Madam Chair.

8 (Whereupon, at 6:57 p.m. a recess until
9 6:58 p.m.)

10 CHAIRPERSON MITTEN: And we're ready to
11 move to our second case, and I'll try not to be too
12 redundant in the introduction. The second case of
13 this evening is Zoning Commission Case No. 02-42.
14 This is a request by the Office of Planning for a text
15 amendment to Title 11, which is the Zoning
16 Regulations, to create a new W-0 Zoning District.

17 Notice of this hearing was published in
18 the D.C. Register on November 29, 2002 and in the
19 Washington Times on January 24, 2003. This hearing
20 will be conducted in accordance with the provisions of
21 11 DCMR section 3021. Those are the procedures for
22 rule making hearings, and one of the notable
23 differences is we don't swear you in, although we do
24 hope that you'll tell the truth.

25 If you would like a copy of the hearing

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1 announcement, again, it's on the table near the door.

2 The order of procedure is largely the same. We'll
3 begin with preliminary matters. Then we'll have the
4 presentation by the Office of Planning, reports of any
5 other Government agencies, reports of anyone who is
6 representing an ANC here this evening, provided that
7 they have appropriate authorization from the ANC,
8 organizations and persons in support, and then
9 organizations and persons in opposition.

10 Again, organizations will have five
11 minutes. Individuals will have three minutes. And
12 we're going to stick to that as close as we can,
13 because we have a number of people here tonight who
14 would like to testify. I would also note that there
15 is probably, I hope, a witness list at the door, so,
16 please, sign that. It just helps us move in a more
17 orderly fashion through the hearing.

18 I would just remind anyone who is planning
19 to testify to fill out the two witness cards and give
20 them to the reporter on your way up to testify. I
21 think that's all I need to say again in introduction.

22 Mr. Bastida, are there any preliminary
23 matters related to this case?

24 MR. BASTIDA: Madam Chairman, the staff
25 has no preliminary matters. Thank you.

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1 CHAIRPERSON MITTEN: Okay. I just want
2 to, just for clarification sake, point out that we
3 very purposefully put this text amendment first to
4 talk about creating the W-0 Zone District, and then in
5 a later hearing, which will be held on May 19th at 6:30
6 in this room, we will talk about the boathouse. So
7 the boathouse is not a subject for conversation this
8 evening, and if anyone starts to give testimony about
9 the boathouse, I will interrupt you and ask you to
10 just direct your comments exclusively to the W-0 Zone
11 District.

12 We would like to evaluate this Zone
13 District on its own merits and not in relationship to
14 some potential place that it will be mapped. So I
15 just want to caution everybody if they need to amend
16 any of your testimony while you hear the presentation
17 of the Office of Planning, please, do so.

18 So with that, I think, we're ready to move
19 to the presentation. If you're ready yet. Are you
20 ready? Sir, if you have a question, you can check
21 with staff, and then they will pass it along to us.
22 Okay. We've had a question about after you've watched
23 us go rapidly through the first case, it's unlikely
24 that we'll have a bench decision in this case tonight.

25 It's more likely that we will leave the record open

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1 for additional comments and receipt of other
2 materials.

3 So, you know, to the extent that you have
4 neighbors who haven't made it down tonight or that
5 they want to submit testimony or any responses you
6 want to give to the things you hear tonight that you
7 may not be fully prepared to give, we will leave the
8 record open for a period of time. I just wanted to
9 let you know that.

10 I would also like the record to reflect
11 that we've now been joined by Commissioner Parsons.
12 How are we doing down there, Mr. Lawson?

13 MR. LAWSON: Okay.

14 CHAIRPERSON MITTEN: Just turn on the mike
15 there, and we'll be all set. Okay. Whenever you are
16 ready then.

17 MR. LAWSON: Thank you, Madam Chair, and
18 members of the Commission and members of the public.
19 Zoning Commission Case No. 02-42 is for Zoning
20 Regulation Text Amendments to create a new low density
21 W-0 Waterfront Open Space Recreation Zone District.
22 The proposed amendment without a new category Zoning
23 Regulation text without mapping the zone, at this
24 time. Rather, the zone would be available for future
25 use as part of planning or development proposals for

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1 waterfront land in the future.

2 Portions of Washington's waterfront truly
3 constitute a major under utilized asset. While many
4 cities in North America and around the world have
5 reclaimed access to the waterfront simultaneously
6 providing amenity to residents and a cleaner, more
7 ecologically productive river system, the waterfront
8 in portions of the District has received little
9 positive attention.

10 The waterfront was an important component
11 of both L'Enfant and McNolan Plans for transportation,
12 defense and commercial purposes. Retention of the
13 natural waterfront environment and access for
14 recreation purposes have also been important planning
15 considerations leading to the creation of vast park
16 areas along both the Anacostia and Potomac Rivers.

17 Generally, this park land is owned by the
18 Federal Government and administered by the National
19 Park Service. It is unzoned, as the Federal
20 Government is not required to adhere to District
21 Zoning Regulations. However, if parcels of these land
22 are sold, leased or traded so that they contain
23 private enterprises, District Zoning would apply.
24 Other portions of the riverfront in many of the more
25 developed portions of the city were, over time, realm

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1 to undesirable uses from which the public was often
2 excluded, and the quality of the water was allowed to
3 deteriorate.

4 Convenient and immediate access from
5 populated areas to the water's edge became difficult
6 and often uninviting. However, the importance of the
7 Anacostia and Potomac Rivers to the overall urban
8 fabric of the District is being rediscovered and
9 reemphasized. The comprehensive plan envisions a
10 variety of passive and active waterfront uses. It
11 envisions retention or restoration of the natural
12 environment in many areas, and in other areas
13 development which ensures the preservation and
14 enhancement of public open space recreation for use by
15 all District residents, in which compliments and
16 enhances adjacent urban development and the quality of
17 the rivers.

18 Public workshops to develop a vision and a
19 plan for the waterfront or for specific areas along
20 the waterfront have reinforced the desire to see
21 greater access, particularly for recreation purposes.

22 In March of 2002, 20 federal and District agencies
23 that own land or have jurisdiction along the Anacostia
24 signed the landmark Anacostia Waterfront Initiative
25 Memorandum of Understanding representing a commitment

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1 to create an active, cohesive and well-planned
2 Anacostia River Waterfront.

3 The vision of the AWI is of a clean and
4 vibrant waterfront with parks, recreation uses and
5 places for people to meet, relax, encounter nature and
6 experience the heritage of the waterfront. The AWI
7 also seeks to revitalize surrounding neighborhoods,
8 enhance and protect park areas, improve water quality
9 and the environment, and where appropriate increase
10 access to the water and maritime activities along the
11 waterfront.

12 In addition, exciting planning initiatives
13 for waterfront areas, such as these Southwest
14 Waterfront and Southeast Waterfront Plans, Capitol
15 Gateway and Kingman Island, are underway. Finally,
16 land use development proposals for key sections of the
17 waterfront, such as Southeast Federal Center or
18 Reservation 13, are in process.

19 The existing Waterfront Zones W-1, W-2 and
20 W-3 permit many forms of development, including uses
21 that neither require nor enhance the waterfront at
22 densities and heights that would be inappropriate and
23 greater than normally envisioned along portions of the
24 river's edge. They will remain appropriate zones for
25 some areas and some forms of development, but serve a

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1 purpose very different from that of the W-0 Zone.

2 In response to all of this and past
3 suggestions for the establishment of new Open Space
4 Zoning, the Office of Planning is recommending the
5 creation of a new Waterfront Open Space Recreation
6 Zone. The W-0 Zone is intended to help protect
7 certain waterfront areas from overdevelopment. It
8 would provide valuable zoning flexibility by creating
9 a new low density Waterfront Zone, which would
10 encourage public park space along the waterfront, as
11 well as low density of water related uses which would
12 enhance the waterfront experience.

13 The zone is not, however, a natural
14 preservation zone. Vast portions of existing park
15 land will remain undeveloped, and the W-0 Zone would
16 not be an appropriate zone for these areas. It is
17 important to remember that this amendment involves a
18 text amendment only. The application does not include
19 a map amendment to zone or rezone any lands,
20 businesses or uses to the W-0 Zone, at this time. Any
21 future applications to apply to zone to specific
22 property would require a complete and separate zoning
23 map amendment application with full Zoning Commission
24 and public review.

25 The goals of the new W-0 Zone, as

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1 envisioned by the Office of Planning, are to provide a
2 flexible new planning tool for use in future planning
3 and development proposals; to encourage greater access
4 to the water's edge for a variety of active and
5 passive recreation uses; to encourage uses which
6 activate the water surface; to expand recreation
7 opportunities and to encourage a greater sense of
8 stewardship of the rivers; to encourage better
9 protection of the natural environment of the rivers
10 while promoting physical and visual connections to the
11 waterways; activating the public river's edge with
12 waterfront enhancing retail, cultural and recreation
13 uses, but ensure that such uses do not detract from
14 the overall maritime character; and over time, as the
15 zone is applied, to add predictability as the area is
16 intended to be public recreation open space with
17 limited development would be appropriately zoned.

18 Most open space recreation uses, as
19 envisioned by the Office of Planning, would be
20 permitted as of right, including park open space and
21 playground, this would include pedestrian and bicycle
22 trails, community gardens, temporary markets for
23 produce, arts and crafts, temporary boat construction
24 and nature interpretative center. In response to
25 comments made as part of the public review, OP invites

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1 comments on the necessity and means of defining
2 temporary for boat construction and markets.

3 Uses for which direct access to the river
4 is necessary, and which serve to activate the water
5 surface, are recommended to be permitted by special
6 exception to provide for Zoning Commission or Board of
7 Zoning Adjustment review of the appropriateness of the
8 use to the particular site and a means by which the
9 use is designed and cited to augment, rather than
10 detract from the natural environment and the
11 waterfront experience.

12 These uses would include marina, which may
13 include a percentage of floating homes, a boathouse
14 for a rowing, kayaking or canoe club and a yacht club.

15 Land based retail, cultural and recreation uses,
16 which would enhance the waterfront experience, would
17 also be permitted by special exception. These uses
18 would include cultural institutions, such as an art
19 gallery, theater, museum or library. User is
20 accessory to boating, such as boat construction,
21 rental and sales, place of worship, private club,
22 recreation building and restaurant and many other
23 forms of retail and services, which relate to or which
24 would enhance the enjoyable experience for waterfront
25 uses.

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Guidelines for special exception uses would provide direction for the design of the facilities and for the review of applications. Zoning Commission review special exceptions for proposals that are also requesting initial zoning on any site that is currently unzoned would also be permitted. Regulations pertain to the size and siting of any structures, and parking requirements are also recommended.

FAR lot coverage and height would generally be less than permitted in other Waterfront Zones. FAR and lot coverage for marinas, yacht clubs and boathouses are proposed to be higher than that for other uses to address the unique situation that these uses could be proposed on land that is currently within federally owned park space and unsubdivided. Once the land is subdivided for one of these private uses, it would be removed from public park space requiring a low FAR would result in the subdivision from the park of parcels which are larger than necessary to accommodate the desired facility size, thus causing the removal of more park land than would otherwise be required.

In addition to Office of Planning notification, OP distributed copies of the W-0 Zoning

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1 concept form to many waterfront related businesses,
2 community environmental groups, ANCs and individuals,
3 as well as other District agencies. Presentations
4 were made to the Anacostia Waterfront Restoration
5 Committee, the ANC 6D, the ANC 6B and the Washington
6 Waterfront Association. Valuable comments were
7 received as reflected in the more detailed version of
8 the draft W-0 Zone attached to the OP report for
9 Zoning Commission information tonight.

10 While the intent and basic regulations of
11 these zones are unchanged, the report outlines where
12 changes are proposed by the Office of Planning. These
13 include ones to replace the term "houseboat" with
14 "floating home" and provide a revised definition. A
15 higher percentage of floating homes within a marina is
16 also proposed. Add a new clause stating that existing
17 structures or uses with a valid Certificate of
18 Occupancy or business of license as of January 31,
19 2003 are considered conforming.

20 This would only come into play if the W-0
21 Zone were ever proposed for an existing site or use as
22 part of a future rezoning application. Clarify
23 special exception review considerations and
24 application requirements, simplify regulations
25 pertaining to marina, floating home, boathouse and

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1 yacht club uses, remove the previously recommended
2 regulation, which would have limited the amount of
3 site that could be covered with any impervious
4 surface. This was replaced with more general language
5 regarding assessment of the environmental and
6 ecological impacts of development on the waterfront as
7 part of the special exception review process.

8 Finally, to simplify parking requirements
9 and add bicycle parking space requirements. Again, to
10 compare the proposed W-0 Zone to existing Waterfront
11 Zones, the W-0 Zone would permit a lower FAR lot
12 coverage and height generally permitted elsewhere and
13 certainly less than permitted other W Zones to provide
14 a new alternative to existing zoning. The text
15 amendment would, therefore, provide a valuable
16 alternative to existing zones.

17 In conclusion, OP feels that the
18 establishment of a new low density Waterfront Zone is
19 desirable. It would be of great benefit along
20 specific portions of the waterfront as the exciting
21 Anacostia Waterfront Initiative and other waterfront
22 related planning initiatives are discussed and
23 implemented. This text amendment would add to the
24 planning tool box for the riverfront areas. It would
25 add long term stability and predictability to the

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1 types and intensities of uses along portions of the
2 riverfront.

3 As noted in the Office of Planning report,
4 OP recommends that the W-0 Zoning District initiative
5 be approved. A detailed codified version of the zone
6 is attached to the report for Zoning Commission
7 information. OP now looks forward to receiving
8 additional comments and suggestions from the public
9 and from Commission members regarding what we feel is
10 a very exciting proposal, and we are available to
11 answer questions. Thank you.

12 CHAIRPERSON MITTEN: Thank you, Mr.
13 Lawson. Any questions for Mr. Lawson? Mr. Hannaham?

14 MS. MCCARTHY: Madam Chair, could I just
15 add one last thing to the Office of Planning report?

16 CHAIRPERSON MITTEN: Sure.

17 MS. MCCARTHY: As Mr. Lawson said, we do
18 think that the W-0 Zone is a valuable addition to the
19 planning and zoning tool box, and does need to be seen
20 in the context of those various other zones. We know
21 there has been some concern expressed about the
22 special exception uses, and I just wanted to amplify
23 that the special exception uses are basically designed
24 to permit development that fits the standards and the
25 criteria that we articulate in the zone and lay out

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1 very clearly, and it's then an opportunity for the
2 Board of Zoning Adjustment to determine if those uses
3 meet the criteria.

4 Essentially, the benefits of that are: 1)
5 That everybody gets to determine whether there is an
6 adverse impact to anything that is proposed on the
7 waterfront, any of those special exception uses, and
8 the benefit is that we get to tailor the consideration
9 of those uses to the individual use and the individual
10 circumstances surrounding that use. So rather than
11 prohibit all, you know, marinas or all museums or
12 places of worship, we articulate a criteria by which
13 that could fit in well with the waterfront uses, and
14 then we permit the Board of Zoning Adjustment to look
15 at that particular use that's proposed, in light of
16 those standards, and make that determination.

17 I think there's been a little
18 misunderstanding that the special exception use is a
19 very high hurdle, a difficult barrier and would act to
20 prohibit those uses, and instead what we are trying to
21 do is just make sure that the uses that we spell out
22 by special exception can exist, but can exist in a way
23 that meets the standards for the waterfront and they
24 do not have any adverse impacts on neighboring
25 property and neighboring users. Thanks.

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1 CHAIRPERSON MITTEN: Thank you. Mr.
2 Hannaham?

3 COMMISSIONER HANNAHAM: Thank you, Madam
4 Chair. My first question relates to the boundaries of
5 this text amendment, you know. Are we looking at the
6 total District of Columbia, and are the boundaries of
7 the District of Columbia included in the Potomac and
8 Anacostia Rivers? I know there was mention of the
9 Anacostia Waterfront Initiative. I saw one slot
10 earlier that showed something on the western side as
11 well. I think it was Poplar Point. I'm just trying
12 to get a better feel as to what the boundaries are,
13 what's envisioned for the boundaries for this
14 particular text amendment.

15 MR. LAWSON: Yes, counselor, the proposal
16 is for a text amendment only. We are not proposing
17 that the zone be applied to any lands, at this time.
18 In theory, the zone could be applied anywhere within
19 the District.

20 COMMISSIONER HANNAHAM: Okay.

21 MS. MCCARTHY: Okay. Actually, we should
22 slightly modify that. It has been proposed for
23 mapping, but only in one area, and that was the
24 Southeast Federal Center overall zoning proposal that
25 we presented to the Commission, so it's only for those

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1 lands that are currently part of the federally
2 controlled Southeast Federal Center, at this point in
3 time, and just for a strip that's along the waterfront
4 in the Southeast Federal Center. But other than that,
5 the purpose -- and that's an entirely separate case.
6 But what's before us tonight is simply to determine
7 should this be a zone that is available, should the
8 Commission wish to map it in appropriate places in the
9 District of Columbia.

10 COMMISSIONER HANNAHAM: Okay. The only
11 follow-up to that is since you are looking at Poplar
12 Point in this text, have you confided with the people
13 who live in that community? I'm thinking about the W-
14 8, the ANC and the other communities in that part of
15 the zone.

16 MS. MCCARTHY: When and if the Office of
17 Planning proposes this to be applied to Poplar Point
18 or any other place.

19 COMMISSIONER HANNAHAM: Okay.

20 MS. MCCARTHY: We will spend a
21 considerable amount of time working with whatever area
22 the W-0 Zone would be proposed for, but, at this point
23 in time, it's just the creation of the zone itself.
24 We haven't looked at applying it to any place other
25 than the very limited application in the Southeast

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1 Federal Center.

2 COMMISSIONER HANNAHAM: Okay. Okay.
3 Thank you. I'll try hard to keep myself focused then.
4 Thank you. Thank you, Madam Chairman.

5 CHAIRPERSON MITTEN: I would just like to
6 amend one thing, which is we have advertised it, in
7 the alternative, outside, but that's for the 19th of
8 May, so we are just trying to divorce ourselves of any
9 specific location and just trying to decide if the
10 text makes sense to establish. Anyone else have
11 questions?

12 UNKNOWN PERSON: Does that include the
13 audience?

14 CHAIRPERSON MITTEN: No, sir. No, sir,
15 sorry.

16 VICE CHAIR HOOD: Madam Chair, I just
17 wanted to ask about the measuring of height. I think
18 I saw on the slide Mr. Lawson said above the water
19 surface, I really don't want to ask this question,
20 because, I mean, you know, what if you have a wave,
21 but anyway, I really didn't follow that, and
22 realistically I said it in a joke, but that's what I
23 was sitting here thinking. You know, because what
24 will happen is applicant gets to come in and it
25 depends on what day if it's a high tide or whatever

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1 the case is. If you can just explain to me above the
2 water surface?

3 MR. LAWSON: The intention is that there
4 would be two separate measurements for height within
5 the W-0 Zone. One would be the more standard kind of
6 a measurement for land based structures, something
7 like a boathouse. That would allow a height of 40
8 feet, actually. There is a separate kind of section
9 of structures, which basically relates to floating
10 homes within a marina and how high a floating home
11 within a marina should be.

12 There was some discussion that the height
13 that would be permitted for a floating home should be
14 somewhat less to preserve views and to preserve sort
15 of the waterfront character. So we proposed a height
16 of 25 feet, that would be measured from the --
17 normally, it's measured from the high water mark along
18 the shoreline, but I don't disagree with you that this
19 is probably something that we, Office of Planning,
20 should discuss with the DCRA, probably, to see if they
21 have suggestions for kind of tightening that section
22 up.

23 VICE CHAIR HOOD: I would agree. I just
24 see us opening up for a lot of different
25 interpretations, so that would be good if we could do

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1 that. Thank you. Thank you, Madam Chair.

2 CHAIRPERSON MITTEN: Actually, I wanted to
3 follow-up on that, because as you are making your
4 presentation, and I was thinking you used the word
5 land based uses, and I find this interesting to know
6 if it's true, do we have jurisdiction over the water?

7 I mean, as we talk about some of these things, I
8 mean, does our jurisdiction extend to the water?

9 MR. LAWSON: Certainly my understanding
10 from discussions that we do have jurisdiction out to a
11 certain extent within the water.

12 CHAIRPERSON MITTEN: And when you say to a
13 certain extent?

14 MR. LAWSON: I knew you were going to ask
15 me that. To be honest, I can't remember, and I can
16 again clarify that.

17 CHAIRPERSON MITTEN: Okay. I think we
18 need that, because we shouldn't give people the
19 impression that we have control over something that we
20 don't, and we also shouldn't fool ourselves. We
21 shouldn't include something in the ordinance if it's
22 really not within our jurisdiction. So I think that
23 we need to explore that a little bit more.

24 COMMISSIONER HANNAHAM: Madam Chairman,
25 could I just throw a thought in there? I remember in

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1 recent past, the District took great pride in its 26
2 miles of shoreline, which was officially the basis for
3 everything that the District did.

4 CHAIRPERSON MITTEN: Yes.

5 COMMISSIONER HANNAHAM: In terms of
6 looking at water quality and the whole bit in the
7 Potomac and Anacostia.

8 CHAIRPERSON MITTEN: And I understand that
9 I just didn't know how far does our reach go.

10 COMMISSIONER HANNAHAM: Well, earlier when
11 I asked, they told me that this proposed text would
12 include the District boundaries of the Potomac and
13 Anacostia.

14 CHAIRPERSON MITTEN: And how far does that
15 go, though?

16 COMMISSIONER HANNAHAM: Oh.

17 CHAIRPERSON MITTEN: I mean, I don't know,
18 you know, in different jurisdictions it goes to the
19 middle of the body of water.

20 COMMISSIONER HANNAHAM: Oh, no.

21 CHAIRPERSON MITTEN: Or it's at the bulk
22 end.

23 COMMISSIONER HANNAHAM: It's shore to
24 shore for us.

25 CHAIRPERSON MITTEN: Okay.

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1 COMMISSIONER HANNAHAM: The way we're
2 configured, I would think that it would be shore to
3 shore.

4 CHAIRPERSON MITTEN: Okay.

5 COMMISSIONER HANNAHAM: Within the
6 District boundaries.

7 CHAIRPERSON MITTEN: Okay. Anyone else
8 have any questions? Mr. Parsons?

9 COMMISSIONER PARSONS: I wanted to focus
10 on, let me see, section 905.5, and I'll read it for
11 those members of the audience that may not have it
12 handy, but it talks about Zoning Commission review,
13 and it says "In the case of a request for initial
14 zoning of a property to the W-0 District, the Zoning
15 Commission may review special exception variance
16 request simultaneously with the Zoning Map Amendment
17 Application."

18 I agree with this. It is a new role for
19 the Zoning Commission, and is this an initial zoning
20 of private land as well? I mean, now if we wanted to
21 apply this to the Anacostia Waterfront, the Buzzard
22 Point area for instance, how would that come before us
23 in this section?

24 MR. LAWSON: It's certainly my
25 understanding that all private land is already zoned,

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1 so initial zoning would not apply to private land. It
2 would apply more to federal property, which is
3 currently unzoned, but for some purpose zoning is
4 being proposed for the lands.

5 COMMISSIONER PARSONS: Okay. Thank you
6 very much.

7 CHAIRPERSON MITTEN: I just wanted to
8 follow-up on that just to be clear, because it doesn't
9 say the initial zoning of a property that happens to
10 be the W-0 District. It says the initial zoning of a
11 property to the W-0 District. So any time a property
12 would be zoned or rezoned, that would be an initial
13 zoning to the W-0. So is it your intention that it
14 would only be when the property is going from unzoned
15 to W-0 that that would apply?

16 I mean, I can see how it could apply. I
17 mean, if the idea is to make it an efficient process
18 for someone, then I think it would apply even if it
19 was being rezoned.

20 MR. LAWSON: I would agree with that. The
21 intent of this was, of course, to streamline the
22 process. People were coming before the Zoning
23 Commission for a rezoning application to deal with
24 other issues that surround the application, rather
25 than having to go through a two step process.

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1 CHAIRPERSON MITTEN: Okay.

2 MR. LAWSON: So I certainly would be.

3 CHAIRPERSON MITTEN: Okay. So we probably
4 just need to get rid of the word initial, and then I
5 think that will convey it better. Thank you. Anyone
6 else have questions for the Office of Planning?
7 Anyone on the Commission have questions for the Office
8 of Planning? Okay.

9 I don't have any reports from any other
10 Government agencies. Is there anyone else here
11 representing a Government agency? Ma'am? It's not
12 on. It went off. Okay.

13 MS. BLUMENTHAL: Good evening, Madam
14 Chairman and members of the Commission. I am Sally
15 Blumenthal representing the National Park Service, and
16 I would like to share with you the views of the
17 National Park Service on the proposed regulations to
18 create the new W-0 Waterfront Open Space Zoning
19 District.

20 The Park Service supports the Commission
21 and the Office of Planning in the creation of this
22 zone to provide for waterfront park open space. We
23 believe that it is essential for the implementation of
24 the Anacostia Waterfront Initiative, which we have
25 been actively engaged in and strongly support as well.

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1 We also hope that this will lead to other Open Space
2 Zones that the Commission may consider in the future.

3 The Park Service manages about 20 miles of
4 shoreline riverfront parks on the Potomac and
5 Anacostia Rivers in the District of Columbia.
6 Generally, we provide for the recreational needs of
7 our visitors through concessions, either owned or
8 operated facilities, marinas, golf courses, those
9 sorts of facilities. An example of that is the
10 Thompson's Boat Center in Georgetown, which is our
11 boat center that is where we store rowing shells,
12 kayaks, canoes, that sort of non motorized waterfront
13 craft.

14 In the last 15 years or so, the sport of
15 rowing has increased dramatically. Right now, the
16 college rowing programs are operating out of
17 Thompson's and are initiating the process to move to
18 their own facilities to operate their collegiate
19 rowing programs in the manner that the other
20 collegiate rowing programs in the country work. We
21 have about two, maybe three cases where these
22 university or high school scholastic programs need fee
23 title to the land to erect their boathouses for a
24 variety of reasons.

25 In those circumstances, the Park Service

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1 would use our authorities to exchange property with
2 these universities, the eight sites for boathouses.
3 They would acquire private property for us, and we
4 would exchange fee title for fee title, so that
5 there's no net loss of park land. We also, by doing
6 this, tend to keep these boathouse sites to an
7 absolute minimum lot size, so that there is no real
8 net loss of park land, and we also would impose
9 perpetual covenants governing design and operational
10 requirements of these boathouses.

11 By approaching the establishment of
12 university boathouses in this manner, we believe we
13 can minimize the amount of riverfront open space
14 that's removed from public ownership and yet retain a
15 park like setting surrounding the boathouses, in
16 effect, they will become in-holdings within park land
17 similar to Potomac Boat Club in Georgetown or the
18 Washington Canoe Club.

19 In each instance involving a land exchange
20 for construction of a university boathouse, the Zoning
21 Commission will be provided with a design concept that
22 has been approved by the Commission of Fine Arts, the
23 Old Georgetown Board, the Historic Preservation Review
24 Board, the National Capital Planning Commission and
25 the National Park Service. And in that connection, we

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1 have a number of concerns with some of the parts of
2 this proposed Open Space Zone.

3 We recognize that the Office of Planning
4 did analyze the creation of boathouse sites in a
5 number of instances relating to lot occupancy, FAR,
6 parking, side yard requirements, but we don't think
7 that these proposals will be able to meet what's
8 identified or proposed in this Waterfront Zone. For
9 instance, we will not be allowing parking on these
10 boathouse sites, because we will be providing parking
11 elsewhere. We don't believe parking should be on the
12 waterfront. It's an appropriate use for the open
13 space of these shoreline parks. Although, you are
14 proposing a parking requirement.

15 Boathouses unlike marinas are boathouses
16 for non motorized watercraft, unlike marinas is a
17 fairly large structure in a fairly small space,
18 because the boats are all stored inside the boathouse.

19 A marina, on the other hand, is a structure with a
20 fairly large dock space that's where the boats are
21 stored. This is what causes the problems that we see
22 with the lot occupancy and the FAR.

23 The other concern that we have is with
24 this 20 foot setback requirement. We think that could
25 be problematic due to the depth of the boathouse sites

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1 being created. In general, we appreciate that this 20
2 foot setback is to create public promenade or other
3 riverfront public way, but we believe in the case of a
4 boathouse that public safety is also an issue, and in
5 these circumstances would prefer the pathways to be to
6 the rear of these facilities.

7 We would be very pleased to work with the
8 Office of Planning to achieve the mutual objective,
9 and I would be happy to answer any questions the
10 Commission may have.

11 CHAIRPERSON MITTEN: Any questions? Mr.
12 Hood?

13 VICE CHAIR HOOD: Madam Chair, I just want
14 to ask Ms. Blumenthal has the National Park Service
15 already been working with the Office of Planning?

16 MS. BLUMENTHAL: Through the Anacostia
17 Initiative, not specifically on this proposal.

18 VICE CHAIR HOOD: Not specifically, okay.
19 Thank you.

20 MS. BLUMENTHAL: Yes.

21 CHAIRPERSON MITTEN: In a more generic
22 sense, you mentioned specifically, as it relates to
23 these prospective boathouse sites, that you may be
24 exchanging other land for, that you will not allow
25 parking on those sites, but as a more generic policy

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1 for other uses that might emerge where we might map
2 this zone and then the uses that would go there, from
3 the Park Service's prospective, would you recommend
4 eliminating the parking requirement?

5 As you described, you would have parking
6 provided elsewhere. It's not that there won't be
7 parking provided, it will be provided away from the
8 waterfront. Would you recommend that as a wholesale
9 approach?

10 MS. BLUMENTHAL: Well, I think maybe the
11 approach should be some flexibility dependent upon the
12 particular circumstances, because there could very
13 well be other areas when this is implemented where
14 imposing a specific parking requirement right on the
15 waterfront might be exactly the wrong thing to do.

16 CHAIRPERSON MITTEN: Yes.

17 MS. BLUMENTHAL: I think.

18 CHAIRPERSON MITTEN: Okay. Anyone else
19 have questions? Mr. Hannaham?

20 COMMISSIONER HANNAHAM: I was just curious
21 about Park Service's general philosophy with respect
22 to the District in the exchange of or swapping of
23 properties. Much of the District recreational areas
24 would fall on Park Service and they were transferred
25 one way or another. I see the potential for a lot

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1 more happening, you know, in these areas if there was
2 a proactive attitude on the part of the Park Service
3 to make these things happen.

4 MS. BLUMENTHAL: Well, let me address two
5 parts of your question. You are, I believe, referring
6 to the very large transaction that the National Park
7 Service in the District of Columbia and the National
8 Capital Planning Commission undertook in the '70s to
9 transfer the jurisdiction of the various local
10 recreation properties, the playgrounds, the rec
11 centers and the community parks from the National Park
12 Service to the District of Columbia.

13 COMMISSIONER HANNAHAM: Right.

14 MS. BLUMENTHAL: In that case, the
15 properties still remain public. It was just
16 administered by the District of Columbia as opposed to
17 the Park Service and it's not at all what we're
18 talking about here.

19 COMMISSIONER HANNAHAM: Yes.

20 MS. BLUMENTHAL: In two, perhaps three
21 circumstances that we're aware of, we would actually
22 be exchanging fee title with a non governmental
23 entity, a private entity in exchange for fee title to
24 an equivalently valued property to include within the
25 park system. So while we would be giving up park

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1 land, in return we would be acquiring equivalent park
2 land.

3 COMMISSIONER HANNAHAM: All right. No, I
4 appreciate that. I was thinking more in terms of the
5 GSA, this new initiative where GSA enabled the
6 District to take over property for a variety of
7 purposes, other than governmental.

8 MS. BLUMENTHAL: The Southeast Federal
9 Center?

10 COMMISSIONER HANNAHAM: Right. The
11 Southeast Federal Center. I mean, is National Park
12 Service thinking along those kinds of lines, too? I
13 mean, it's just another Government agency.

14 MS. BLUMENTHAL: Well, we haven't give it
15 any thought at all.

16 COMMISSIONER HANNAHAM: That's a lot of
17 tourists.

18 MS. BLUMENTHAL: Our mission and GSA's
19 mission are very different.

20 COMMISSIONER HANNAHAM: I realize that,
21 yes.

22 MS. BLUMENTHAL: And they got special
23 legislation to facilitate redevelopment and
24 revitalization of that property.

25 COMMISSIONER HANNAHAM: Right. I

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1 understand that. But I just wondered whether you will
2 be supportive of that kind of legislative initiative
3 if it should occur?

4 MS. BLUMENTHAL: I'm not sure I'm
5 prepared. I don't know. I suppose we would have to
6 look at it on a case by case basis and what the
7 objective was, yes.

8 COMMISSIONER HANNAHAM: Okay. Thank you
9 very much then.

10 MS. BLUMENTHAL: You're welcome.

11 COMMISSIONER HANNAHAM: Thank you, Madam
12 Chair.

13 CHAIRPERSON MITTEN: Anyone else, any
14 questions? All right. Thank you. And if you had
15 something, written testimony that you could provide?
16 No? I'll just have to take good notes. Okay.
17 Besides we have our little resource here that we can
18 get. Okay. Anyone else, Government agency? All
19 right.

20 Then we have a few people, let's see,
21 maybe just one, representing ANC 6D. Mr. Johnson?

22 MR. JOHNSON: Johnson.

23 CHAIRPERSON MITTEN: Yes. You're learning
24 a lot about zoning, right?

25 MR. JOHNSON: I've been having a very

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1 accelerated education process in the last few months.

2 CHAIRPERSON MITTEN: Just identify
3 yourself for the record as you begin speaking.

4 MR. JOHNSON: Right. For the record, my
5 name is Ed Johnson. I'm the secretary of ANC 6D and
6 the Commissioner for ANC 6D-01.

7 CHAIRPERSON MITTEN: Go ahead.

8 MR. JOHNSON: Great. In the interest of
9 saving some time, I would ask that our full written
10 testimony, which you should have received a copy of
11 earlier today, and I apologize for the lateness of
12 them coming in, be submitted into the record so that
13 we can more expeditiously use this time to discuss
14 more important issues from the Commission.

15 CHAIRPERSON MITTEN: That's fine.

16 MR. JOHNSON: In that case, just leaping
17 in, the major items of concerns for the community are
18 as follows: 1) There is significant concern among
19 stakeholders along the Southwest Waterfront where the
20 W-0 Zoning could be applied in a way that would be
21 detrimental to stakeholders and to the public. While
22 the Office of Planning final report dated February 28th
23 states that they do not propose that any lands be
24 zoned W-0 as part of the Zoning Commission case, and
25 offer assurances that they do not intend to do so to

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1 businesses along the Southwest Waterfront in a
2 December 2002 memorandum, and that's attached to the
3 package you should have received.

4 The Office of Planning wrote that the W-0
5 Zone was indeed intended to apply to areas in the
6 Southwest Waterfront. The comprehensive plan calls
7 for significant development as does the Office of
8 Planning's new Southwest Waterfront Plan. To the
9 extent that these regulations may conflict with plans
10 for the Southwest Waterfront, they are inconsistent
11 with the comprehensive plan and would violate D.C.
12 Office Code section 664102. Actually, in the issue of
13 brevity, I may abbreviate the rest of these Code
14 references if it's okay with the Commission.

15 CHAIRPERSON MITTEN: That would be great.

16 MR. JOHNSON: And I promise not to read
17 them. They are also attached. The application of
18 this zone to existing businesses or organizations in
19 this area would certainly be to greatly diminished
20 property values. D.C. Official Code, as cited above,
21 states that the regulations should encourage stability
22 of land values within a District. An improperly
23 applied W-0 Zone in Southwest could have a devastating
24 effect on land and marina values, and the final set
25 down document does not provide adequate measures to

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1 ensure against that.

2 2) One attempt to address the issue of
3 protecting stakeholders in section 901.6 is hazy at
4 best, and also inconsistent with the above mentioned
5 D.C. official code, as well as other existing DCRA
6 regulations. 6641 states that a lawful use of a
7 building or premises preexisting the adoption of a
8 regulation is lawful. The language does not allow for
9 retroactive application of a Zoning Regulation.

10 Additionally, grandfathering in an
11 existing business based on master business license
12 issuance is not consistent with loading generally
13 where it's a Certificate of Occupancy that matters.
14 Moving along to Certificate of Occupancies, DCRA has
15 not ruled whether docks on the water are required to
16 have C of O's, and has stated that none of the marinas
17 and yacht clubs in the District have Certificates of
18 Occupancy for their docks. Excuse me, I've been
19 talking so much recently, I'm running out of voice.

20 That's not to say the marinas often have
21 offices and lands that have Certificates of Occupancy,
22 but the docks themselves do not. If DCRA were to rule
23 that such permits are required and a W-0 Zone were
24 applied to existing properties, then all the marinas
25 and yacht clubs in the city would have to shut down,

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1 because they wouldn't meet the W-0 Zoning
2 Requirements.

3 3) What amounts to, and I'm going to
4 disagree with Mr. Parsons here I'm afraid, I hope I'm
5 convincing, absolute discretion by the Office of
6 Planning under section 905 for special exceptions,
7 essentially, violates the great weight given to
8 recommendations of ANC under D.C. Official Code. The
9 Zoning Commission amends regulations under 641 without
10 initial triage by the Office of Planning, but subject
11 to great weight afforded to ANC recommendations. The
12 effect of getting preliminary screenings of the Office
13 of Planning is what the Office of Planning has now put
14 on equal footing with the ANC, thereby diminishing the
15 role of the citizens in the neighborhoods that would
16 be most affected by such application of this W-0
17 Zoning.

18 The statute does not support the Office of
19 Planning attempting to increase its authority, and
20 there's no valid public policy reason why any of the
21 proposed special exception uses should always be
22 subject to Office of Planning review, even in a W-1
23 Zone.

24 4) The mayor recently stated that his goal
25 is to increase the population of District residents to

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1 800,000. DHCD has partnered with the Office of
2 Planning to ensure that boats on the waterfront
3 continue to be another affordable housing resource,
4 and the section of the snap is also attached in the
5 package. We have you cluster 9. Nevertheless, this
6 proposal limits the number of live-aboards through
7 zoning and does not allow for residential use of any
8 kind, even as a special exception in a W-0 Zone.

9 These positions of the Office of Planning
10 are inconsistent with the mayor's initiative and the
11 snap. I'm going to add briefly to my written
12 testimony. As someone pointed out to me earlier,
13 there is no law or regulation in the District of
14 Columbia that limits the number of live-aboard boaters
15 in a marina. This would be the first and only
16 limitation of that type. There is, however, Bill
17 1518, I have to refer to it, before the City Council
18 now that would actually not allow limits to be placed
19 on live-aboards, so the Office of Planning is
20 proposing something that is in direct contradiction to
21 a Bill that's before the City Council now.

22 5) The Zoning Commission advertised on
23 January 24, 2003, also attached, that the regulations
24 will apply to Anacostia Park or abutting property east
25 of the river owned by WMATA and Pepco. The

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1 regulations, as they will apply to Anacostia Park, are
2 inconsistent with the comprehensive plan of the
3 National Capital Planning Commission, which calls for
4 a working boatyard where the former Tommy Long's
5 Anacostia Marina was located. I can assure you that's
6 a concern to many people here tonight.

7 Finally, there is no valid public policy
8 reason to restrict yacht clubs from renting slips to
9 transients as proposed in section 917. This
10 restriction will make the District a non-friendly
11 destination for tourists. Also, the District owns
12 marinas that allow transients, so there is some
13 question of a conflict of interest in doing this.

14 Again, the Office of Planning is
15 inconsistent in recommending cruise line use and
16 facilities as a special exception on one area while
17 limiting tourist activity in another. Finally, and
18 I'm speaking on behalf of the ANC tonight and not as
19 an individual Commissioner. We certainly recognize
20 the many benefits that a properly applied W-0 Zoning
21 could bring to neighborhoods throughout our city, and
22 I have to commend Mr. Lawson for having done an
23 outstanding job with communicating with my people or
24 we would have a much longer list than we do tonight.

25 However, this proposal fails to provide

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1 clear and substantive protections to prevent the
2 possible abuse of the zoning to the detriment of long
3 term stakeholders. In addition, the potential for
4 application of a W-0 Zoning when a business changes
5 hands and applies for a new Certificate of Occupancy
6 could deter new investment and be a stumbling block,
7 rather than a stepping stone to achieve the goals of
8 the Anacostia Waterfront Initiative and other plans.

9 Finally, this proposal, Mr. Parsons, I'm
10 doing my best to convince you, that's too much
11 discretion in the Office of Planning and calls for
12 regulation of business and housing at a level that we
13 feel is more appropriate to DCRA, DPW, DHCD, other
14 regulatory agencies. The Office of Planning should be
15 in the planning business, not the regulating business.

16 Again, you know, such allowable discretion
17 by Office of Planning effectively circumvents a public
18 process of community input and could lead to the
19 disenfranchisement of people that would be most
20 effected at the local grass roots level. Until those
21 concerns are addressed, we stand opposed to the Open
22 Space Zone. But I would like to assure that we do
23 approve of it in concept, and we would support this
24 proposal if the previous amendments and community
25 concerns are addressed. Thank you.

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1 CHAIRPERSON MITTEN: Thank you, Mr.
2 Johnson.

3 MR. JOHNSON: Are there any questions?

4 CHAIRPERSON MITTEN: That was my line.
5 Let me just perhaps put your mind at ease about one or
6 two things. The first is that the section 905, the
7 Office of Planning review, that formalizes in this
8 context what always happens. When we get an
9 application for any kind of text amendment, map
10 amendment, plan unit development, we consider whether
11 or not to set it down after we've gotten a report from
12 the Office of Planning just to decide if we're even
13 going to have a hearing, and then it goes back to
14 them, because they are our technical support, if you
15 will.

16 So it's not giving them authority to do
17 decision making, it's just setting a framework for the
18 analysis that they will do to inform the Commission.
19 It all takes place here. So we hear from them and we
20 hear from the community, so it doesn't give them any
21 kind of trump card over you.

22 The other thing about the advertisement on
23 the 24th of January, your point 5, that was a mistake.

24 That was just an error. So you can just completely
25 disregard anything that was in that particular hearing

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1 announcement.

2 MR. JOHNSON: That's wonderful to hear.

3 CHAIRPERSON MITTEN: I appreciate you
4 pointing out some of these things, because this is an
5 area that we don't usually talk about, marinas and so
6 forth, making the distinction between the business
7 licenses and Certificates of Occupancy, and actually,
8 I don't know if you have a copy of the specific text
9 with the red in it, but the Office of Planning in
10 making their recommendations to us have recognized
11 that distinction, and we're happy for you to call it
12 out for our information as well. But we definitely
13 won't overlook that.

14 So let me see if anyone has any questions
15 for Mr. Johnson. Mr. Hood?

16 VICE CHAIR HOOD: Yes, Mr. Johnson, first
17 of all, let me just say that I can appreciate you
18 having issues and then also having solutions. I can
19 appreciate that. Most of the time we hit issues, but
20 we don't have any solutions. 3, I'm just trying to
21 understand what you're saying here, and I think the
22 Chair answered one of my questions. But you have here
23 the effect of giving preliminary screening to the
24 Office of Planning is that the Office of Planning is
25 now being put on the equal footing with the ANC. I'm

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1 just trying to understand what you mean.

2 MR. JOHNSON: Well, and again, that may
3 have been. I think Chairman Mitten addressed much of
4 that concern. The way that read to me was that
5 there's a whole entire prequalification process that's
6 not done in the public eye, and that recommendations
7 be made to you before those recommendations were made
8 to the community.

9 VICE CHAIR HOOD: Okay.

10 MR. JOHNSON: I mean, no disrespect to Mr.
11 Lawson, who I'm very fond of, but pulling paper out of
12 OP is not easy, even for an ANC Commissioner, and
13 there is concern that if we allow them even the
14 appearance of the ability not to share with the
15 public, that they will not share with the public.

16 VICE CHAIR HOOD: And you are right. The
17 Chairman did answer my second question I was going to
18 ask you, but I just was going to also let you know
19 that while we give ANC great weight, by law we're
20 required to give the Office of Planning that same
21 great weight.

22 MR. JOHNSON: Yes.

23 VICE CHAIR HOOD: Okay.

24 MR. JOHNSON: It's understood.

25 VICE CHAIR HOOD: I just wanted to make

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1 sure that was clear.

2 MR. JOHNSON: All right. I have no doubt.

3 VICE CHAIR HOOD: Okay. Okay. I will ask
4 later on, Madam Chair, while I haven't had a chance to
5 look through all of what Mr. Johnson has provided,
6 that we, if we send it back to OP or whatever, also
7 look at some of the issues that he had in his
8 testimony or his correspondence and then see where OP
9 stands with some of the recommendations we see here.

10 CHAIRPERSON MITTEN: Sure.

11 MR. JOHNSON: Thank you.

12 CHAIRPERSON MITTEN: Thank you.

13 VICE CHAIR HOOD: Thanks.

14 CHAIRPERSON MITTEN: Anyone else have
15 questions? Mr. Parsons?

16 COMMISSIONER PARSONS: So, Mr. Johnson,
17 are we okay? Because I share your views about a
18 potential private, if you will, closed door session.
19 That's not what's envisioned here at all. Are you
20 okay with that now? So we have no agreement?

21 MR. JOHNSON: Absolutely not. I've just
22 become kind of attuned to various sections of this
23 thing, as we've been working feverishly. As I
24 responded to Mr. Hood, the reason I'm able to offer
25 substantive, I hope what are substantive, helpful

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1 solutions is because I have had the support of a
2 tremendous number of people who've spent countless
3 hours supporting me. I'm really blessed with a
4 fabulous constituency. But we're okay. I think we're
5 on the same page here.

6 COMMISSIONER PARSONS: I did want to
7 pursue one thing you said, and it has to do with what
8 is commonly known as Tommy Long's Marina. I think
9 you've heard the Park Service here tonight testify
10 that there is no intention to take a marina operation
11 like that, which is a concession operation, or any of
12 the others, James Creek Marina, I believe is in your
13 ANC.

14 MR. JOHNSON: Yes.

15 COMMISSIONER PARSONS: And apply this kind
16 of zoning. It will not apply to federal property, so
17 I want to make sure you understood that.

18 MR. JOHNSON: Well, yes. I think everyone
19 understands what the intentions are. A great deal of
20 concern is that if that property were turned over,
21 then this could be applied, and it could be
22 problematic. I don't think there's a question of
23 understanding.

24 COMMISSIONER PARSONS: Right.

25 MR. JOHNSON: A concern that it could be

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1 abused under certain circumstances, and that those
2 protections should be built in not made as statements
3 in the report.

4 COMMISSIONER PARSONS: I see. Thank you.

5 CHAIRPERSON MITTEN: And, Mr. Hannaham,
6 did you have questions?

7 COMMISSIONER HANNAHAM: I thank you very
8 much, too, for your statement. Could you help me?
9 I'm just trying to get a better sense of what
10 constitutes a marina? Would a fish market set up down
11 in Southwest where you have these boats holed up and
12 are used for retail and fish products, would those be
13 marinas?

14 MR. JOHNSON: You know, the fish wharf,
15 and actually one of my constituents is here from the
16 fish wharf, who could probably answer that question
17 better than I. I might defer that. I'm not sure I
18 could answer you correctly, but I expect he could.

19 COMMISSIONER HANNAHAM: Because marina is
20 frequently mentioned. I'm trying to get a better
21 sense of what the retail establishments are, and maybe
22 that's where that business would be classified, but
23 I'm not really clear, and I thought you might be able
24 to help me.

25 MR. JOHNSON: Well, I mean, marinas tend

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1 to, you know, have multi function uses.

2 COMMISSIONER HANNAHAM: Yes.

3 MR. JOHNSON: It can be a combination of
4 public and private where you have a marina that has
5 docks that are accessible to the public, as well as
6 part of it being for berthing boats, which is a
7 typical use of a marina.

8 COMMISSIONER HANNAHAM: Right.

9 MR. JOHNSON: We have a significant live-
10 aboard population here in the District of Columbia who
11 live aboard their boats. They are D.C. residents.
12 They are tax payers.

13 COMMISSIONER HANNAHAM: Yes.

14 MR. JOHNSON: I'm one of them for 10
15 years. I have a great deal of expertise in live-
16 aboard boating. They can also be commercial
17 establishments, whether it is cruise ships, whether it
18 is retail services. There's probably a technical
19 definition of marina versus wharfage that I'm not sure
20 I'm competent to answer though.

21 COMMISSIONER HANNAHAM: Yes. Another
22 category of boating that struck my mind when I was
23 reading this stuff was sports fishing or people who
24 charter boats and go out for whatever reason, whether
25 it's for fishing or just for the pleasure of boating.

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1 Is there any business like that?

2 MR. JOHNSON: Oh, absolutely.

3 COMMISSIONER HANNAHAM: Okay.

4 MR. JOHNSON: You know, I reside at the
5 Gangplank. There are a number of boats that are
6 available for charter. There's not a whole lot of
7 sport fishing on the Potomac.

8 COMMISSIONER HANNAHAM: But the pleasure
9 boating?

10 MR. JOHNSON: There's more catfishing on
11 the Potomac.

12 COMMISSIONER HANNAHAM: Okay. But
13 pleasure boating?

14 MR. JOHNSON: There's a great deal of
15 pleasure boating, and as soon as it quits snowing, I'm
16 heading down river to escape testimony myself.

17 COMMISSIONER HANNAHAM: Okay. That's
18 fine. I really do appreciate your statement, and
19 we're going to give it a real good hard look.

20 MR. JOHNSON: Thank you very much.

21 CHAIRPERSON MITTEN: Anyone else? I did
22 want to just address something to you, because it was
23 your comments, but also because of the folks that you
24 have with you, you know, seeking guarantees about
25 zoning. Well, I mean, there aren't. You know, zoning

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1 is not ecstatic. You know, it changes over time. But
2 I will say that there is a bias against creating
3 nonconforming uses, and so knowing that there is this
4 bias against, you know, taking an area that's already
5 built to some extent and then, in effect, down zoning
6 stuff that already exists is totally counter
7 productive for everybody. It's not going to get you
8 anything. So all it does is hurt people. So that's
9 not what we're in the business of doing.

10 MR. JOHNSON: Well, understood, I think,
11 outside of the scope of what I would be competent to
12 talk about. I mean, I think there is concern and I'm
13 sure that individuals or Commissioners will share that
14 it could be, in fact, done that way so that their loss
15 is someone else's gain. I think that is a concern
16 that many of my constituents have. I didn't address
17 it specifically and I won't here, because I'm not
18 going to speak to something where I don't know the
19 facts. But I do know that that is a concern.

20 CHAIRPERSON MITTEN: Okay.

21 MR. JOHNSON: And I know Mr. Lawson has
22 worked hard on this, and I hate to beat him over the
23 head, but 901.6 isn't good. I would ask the
24 Commission to really brief its 901.6.

25 CHAIRPERSON MITTEN: That actually is --

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1 MR. JOHNSON: That's the grandfathering,
2 but like I said it uses master business license and
3 the whole issue of Certificate of Occupancy.

4 CHAIRPERSON MITTEN: Right.

5 MR. JOHNSON: I would look at making that
6 a stronger, better --

7 CHAIRPERSON MITTEN: Okay.

8 MR. JOHNSON: Not eliminate it, please,
9 no.

10 CHAIRPERSON MITTEN: Right. I was like
11 what's wrong with 901.6?

12 MR. JOHNSON: No, no, no.

13 CHAIRPERSON MITTEN: You want it to be
14 improved?

15 MR. JOHNSON: Yes.

16 CHAIRPERSON MITTEN: Okay.

17 MR. JOHNSON: I would like to see it made
18 stronger, move effective. Again, when you deal with
19 water and repairing rights there's a great deal of
20 complexity to things.

21 CHAIRPERSON MITTEN: Certainly.

22 MR. JOHNSON: So I know I'm not the final
23 expert on that, but I know there's one behind me.

24 CHAIRPERSON MITTEN: Okay. We'll get to
25 them.

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1 MR. JOHNSON: Super.

2 CHAIRPERSON MITTEN: Thank you. I think
3 that's it.

4 MR. JOHNSON: Great.

5 CHAIRPERSON MITTEN: Thank you very much.

6 MR. JOHNSON: Ms. Mitten, thank you very
7 much.

8 CHAIRPERSON MITTEN: All right. Now,
9 anyone else for ANC that is not on my list? Okay.
10 Then we will move to organizations and persons in
11 support, and we'll start with the three folks from
12 Georgetown, Mr. Brangman and Mr. Gross and Mr. Kirwin.

13 And I would just say that you'll have to decide who
14 is going to get the five minutes and then the other
15 two will get three. And I know you're not going to
16 talk about the boathouse.

17 If you're going to show a picture of the
18 boathouse, just keep it. We're not going to look at
19 pictures of the boathouse. We're not talking about
20 the boathouse. Not tonight. That's May 19th. Okay.

21 MR. GROSS: Good evening, Madam Chairman,
22 members of the Commission. I am Nathan W. Gross of
23 Arnold and Porter. With me are Alan Brangman, a
24 university architect of Georgetown University, and
25 William Kirwin of Muse Architects, the designer of the

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1 proposed Georgetown boathouse.

2 By way of clarification, Madam Chair, the
3 only idea of Mr. Kirwin's testimony would be to relate
4 to specific standards in the zone as illustrated by
5 the boathouse. We can probably do that without
6 pictures. I understand your concern.

7 CHAIRPERSON MITTEN: But I just don't want
8 to -- I would appreciate it if you kept it as generic
9 as possible.

10 MR. GROSS: Very good, we will.

11 CHAIRPERSON MITTEN: Thank you.

12 MR. GROSS: And we will begin with Mr.
13 Brangman followed by Mr. Kirwin, and then I will make
14 some regulatory comments at the end.

15 CHAIRPERSON MITTEN: So are we giving Mr.
16 Brangman the five minutes?

17 MR. GROSS: We will be within those time
18 limits pretty easily. If you are saying we have a
19 total of five plus three minutes, we may be within
20 five minutes.

21 CHAIRPERSON MITTEN: Okay. We'll put you
22 on five and do your best as a group. Mr. Brangman?

23 MR. BRANGMAN: Thank you, Madam Chair. My
24 name is Alan Brangman. I am a university architect
25 for Georgetown University. I am here this evening

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1 speaking in favor of the W-0 Overlay with conditions.

2 What I wanted to do though was speak very quickly
3 about a process that the university has been involved
4 in, which initially when the W-0 was laid down had
5 caused us some concerns, and that is we felt that the
6 process that we had gone through in the agreement that
7 we had struck with the National Park Service actually
8 provided for a number of the issues that were being
9 raised by the W-0 category.

10 That being the discussions with respect to
11 that agreement were very similar to a PUD. We dealt
12 with issues of lot coverage, with issues of building
13 height, with issues of setback, with issues of
14 parking, with issues of easement, all the types of
15 concerns that the Zoning Commission certainly would
16 have as they were looking at a piece of property that
17 had previously been unzoned, which is why we
18 specifically were coming forward with category one,
19 our W-1 category.

20 Our concern or one of the concerns that we
21 have with respect to the W-0 is that given the fact
22 that our application was put in in July and one of the
23 issues that the Commission has raised with respect to
24 our application and the W-0 was that we hopefully
25 could be reviewed as tandem applications, and the

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1 biggest concern we had was with respect to timing.

2 CHAIRPERSON MITTEN: Right.

3 MR. BRANGMAN: Because clearly, with the
4 set down date that we have now, and thank you very
5 much for that date in May, we are two months short of
6 a year, and if the review of W-0 is going to be much
7 longer than what it has been currently, then we have
8 got significant issues that we have to be concerned
9 about with respect to being able to get through the
10 process with ease.

11 I do say in support of the zone, however,
12 that there have been a number of changes and
13 amendments to it. I think that a number of the issues
14 that we were dealing with as a PUD with respect to our
15 agreement have now been taken care of with the
16 exception of one that Mr. Kirwin will speak about, but
17 as long as this can be done in a timely fashion, then
18 the university certainly will be happy with the
19 process. Thank you.

20 CHAIRPERSON MITTEN: And we're mindful of
21 your needs.

22 MR. BRANGMAN: Yes, thank you.

23 CHAIRPERSON MITTEN: Mr. Kirwin?

24 MR. KIRWIN: Yes, thank you. The one
25 issue that we have with the W-0 Zoning, and it will

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1 become an issue with many boathouses on the Georgetown
2 waterfront and possibly other waterfronts, as well, is
3 the waterfront setback.

4 It is in conflict with the need for
5 boathouses to be as close to the river and the water
6 as much as possible, and in conflict with the
7 narrowness of the sites that we have along the
8 waterfront.

9 Boathouses such as Georgetown's have to
10 store rowing shells, and these shells are 69 feet
11 long. When you get into the details of laying out the
12 building plan, you are going to run into difficulties
13 fitting these buildings on these waterfront sites with
14 the setback that is required in the regulations.

15 Furthermore, the stated goals of early
16 drafts of the waterfront setback regulation would
17 encourage public access along the waterfront. Private
18 uses such as Georgetown University will need to limit
19 public access along the waterfront, because for water
20 safety reasons, as well as for security reasons.
21 Thank you.

22 CHAIRPERSON MITTEN: All right. Thank
23 you. Mr. Gross?

24 MR. GROSS: Yes. First, I would like to
25 commend the Office of Planning and the Zoning

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1 Commission for this initiative. I think it's a very
2 superior professional and technical job on the
3 regulation and fills a very important need in the
4 city.

5 I also especially think that the combined
6 map application and special exception process is
7 innovative and very good since a fair number of these
8 sites will be previously unzoned property, as I
9 understand it.

10 A couple of regulatory comments, one is on
11 flexibility. Mr. Kirwin didn't give the full -- I
12 will just mention that our proposed boathouse at
13 Georgetown is very tight on lot occupancy, very tight
14 on FAR, but complies and then does not comply with the
15 setback, so we would have one variance request.

16 I guess the comment I would like to make
17 is that a variance test requires a uniqueness of the
18 property and a finding of a peculiar or exceptional
19 problem using it under zoning. And if you think of,
20 in particular, the Anacostia Park on the east bank of
21 the Anacostia, much of it is simply grassland going
22 down to the river, and someone goes in and says we
23 comply with A, B and C. We need a variance on this,
24 and then the Commission or the Board says what is your
25 unique condition of your property, and it's difficult

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1 to make that case, and some of this just relates to
2 site size, too.

3 The Park Service or the D.C. Recreation,
4 if that's the case, may not want to give up more park
5 land than they need to, and so if the site is somewhat
6 tight, then you are throwing over lot occupancy right
7 away.

8 My thought is that this process is
9 somewhat like a simplified planned unit development,
10 and there in the PUD regulations themselves, there is
11 a string of three provisions that provide that yards,
12 courts and lot occupancy shall be as provided in the
13 regulations, but the Commission may modify those based
14 on the particular case.

15 Then there is another one that allows up
16 to a 5 percent increase in FAR height. In other
17 words, that is capped, and those are the two sensitive
18 ones. I think something along those lines might be
19 worth considering looking towards the objective of
20 keeping most of these cases as special exceptions.
21 The plans will be on the table. A degree of
22 flexibility like that could avoid awkward variance
23 applications.

24 The second comment is just to add to what
25 Mr. Kirwin said about the setback. The Potomac River

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1 Yacht Association also in their written submission
2 commented on this extensively. I mean, essentially, I
3 think the key is is just to not impede access to the
4 waterfront by the public, and I think most of these
5 will be fairly isolated along the river.

6 CHAIRPERSON MITTEN: Thank you.

7 MR. GROSS: And probably won't. I have
8 just a couple of other quick comments if you would,
9 Madam Chair, just 30 seconds.

10 CHAIRPERSON MITTEN: Okay.

11 MR. GROSS: Just on the general concern, I
12 guess, of many of the people here about inappropriate
13 mapping this, and let's say on the southwest
14 waterfront where there is existing businesses. There
15 is the rule in the home overlay that zoning shall not
16 be inconsistent with the comprehensive plan and, at
17 present, the Southwest Waterfront is zoned. Low
18 density is indicated as low density commercial on the
19 Southwest Waterfront. So it would be pretty hard to
20 introduce the W-0 Zone.

21 Now, when the south estimate plan is
22 adopted, and there may be certain limited open space
23 areas in that plan, those limited areas might well be
24 suitable, but anyway, that's just a thought on that
25 issue.

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1 CHAIRPERSON MITTEN: Good point.

2 MR. GROSS: Thank you.

3 CHAIRPERSON MITTEN: I hope everyone in
4 the audience heard you. Any questions for these
5 gentlemen, any questions? All right. Thank you. I
6 look forward to seeing you on the 19th and bring your
7 pictures back. Okay.

8 And then we also have Mr. Morris from the
9 Sierra Club. And is there anyone else who would like
10 to testify in support? Come forward if you would like
11 to testify in support. Oh, Mr. Woodworth, yes, I see
12 you. I am sorry, I didn't have a check next to your
13 name. Both of these gentleman are going to have five
14 minutes.

15 Mr. Morris, whenever you are ready just
16 introduce yourself and begin.

17 MR. MORRIS: Yes, ma'am. I am Bob Morris
18 and I am the conservation chair of the D.C. Chapter of
19 the Sierra Club, and I am here to support the proposed
20 W-0 Zone. It is seen as a positive and useful
21 classification to apply to areas on the waterfront
22 that are being proposed for redevelopment. These
23 areas should be cultivated to promote access to the
24 waterfront by residents and visitors.

25 The concerns, however, about the W-0

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1 classification fall into two categories, and these are
2 just things to amend the proposed text. Those
3 categories are protection of the rivers and
4 conservation of the valuable undeveloped riverfront
5 areas.

6 First, under protection of the rivers, our
7 rivers are currently under performing as economic,
8 aesthetic and recreational assets, because they are
9 polluted. It is essential that all future uses
10 contribute to the extensive and expensive efforts now
11 underway to reduce those pollution levels.

12 The W-0 Zone classification should
13 specifically require than any development use best
14 practices to prevent runoff and pollution. These
15 should include, but not be limited to, the use of low
16 impact development technology, such as bio-retention
17 cells, porous pavers, rain gardens, green roofs,
18 etcetera, as appropriate for whatever the proposed
19 usage is.

20 Additionally, the use of trees in a
21 riparian barrier should be encouraged to take
22 advantage of their unique hydrologic functions and
23 aesthetic and urban heat control features. Second,
24 oh, and along those lines, parking, it was brought up
25 earlier about parking on the waterfront. Parking on

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1 the waterfront is always bad for the river itself
2 because of runoff concerns.

3 Also, in terms of setbacks of structures,
4 the setbacks are designed again to protect the river
5 itself, which is the primary asset that we are
6 concerned with here. The conservation of undeveloped
7 riverfront areas, the District is uniquely blessed
8 with wild undeveloped park land on our riverfronts.

9 These areas are generally west of Key
10 Bridge and along the west banks of the Anacostia, and
11 some on the east banks of the Anacostia. From both
12 river and shore, they provide a natural experience
13 that is seldom possible within the confines of a major
14 city. They also provide unmatched hydrologic
15 services in protecting the river and cleaning and
16 cooling the air.

17 The W-0 Zone should not be applied to
18 currently undeveloped areas. These named areas, West
19 Key Bridge to the District line and on the banks and
20 islands of the Anacostia should be designated as no
21 new development zones to ensure future generations
22 have the possibility of a wild, natural experience
23 within our urban environment.

24 While it's my understanding that the above
25 goals are generally within the intent of the Office of

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1 Planning, I ask that Office of Planning specifically
2 amend the proposed working of the Zoning Regulations
3 to ensure that this is clear to current and future
4 residents, prospective developers and zoning
5 officials.

6 The Commission is the agency that most
7 clearly can set these parameters to maintain and even
8 improve the quality of our rivers and their shores,
9 and setting this balance will clearly promote
10 redevelopment of parcels that presently detract from
11 optimal use of our waterfronts while still maintaining
12 our valuable and rare natural riverfront areas. Thank
13 you.

14 CHAIRPERSON MITTEN: Thank you, Mr.
15 Morris, and if you just hold your seat and we'll hear
16 from Mr. Woodworth.

17 MR. MORRIS: Yes.

18 CHAIRPERSON MITTEN: And then ask
19 questions.

20 MR. WOODWORTH: Good evening, Madam Chair.

21 CHAIRPERSON MITTEN: You need to turn on
22 that microphone for us.

23 MR. WOODWORTH: There we go. Good
24 evening, Madam Chair and members of the Commission.
25 My name is Jim Woodworth from the National Resources

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1 Defense Council. My comments this evening are based
2 on an October 18th memo from Andrew Altman. I have not
3 had an opportunity to actually review the draft as
4 presented tonight. I will attempt to summarize my
5 written comments I submitted to you.

6 Incidentally, I received the memo not
7 directly from Joel, but from the Chesapeake Bay
8 Foundation, so I have not had the pleasure of speaking
9 with Mr. Lawson directly about this, and I look
10 forward to, hopefully, in the future.

11 I submitted a few other items of paper,
12 not to inundate you, but one is a GIS Overlay from the
13 D.C. Department of Health with respect to steep slopes
14 in D.C. Another is a draft document concerning
15 Chesapeake Bay goals. It is a draft document
16 concerning riparian force buffers in the Chesapeake
17 Watershed, and the last, which I only submitted one
18 copy of, because it's a fairly lengthy document, is a
19 technical and scientific review from Portland, Oregon
20 concerning riparian buffer areas, which is referenced
21 in my comments.

22 I would like to start off by saying that
23 we applaud the Office of Planning's efforts for taking
24 a proactive role in managing development on the
25 Anacostia Waterfront. We think that this proposal

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1 improved greatly on all the existing waterfront
2 districts, District zones currently in existence.

3 However, we suggest that this could be
4 improved in several ways, and my comments will be
5 tailored to two specific areas of improvement. We
6 realize that no amount of regulatory language will
7 limit development. If a city is willing to do
8 development, we will find ways to do that, and that's
9 why we have variances and why we have the special
10 exception uses and whatnot.

11 However, we think it is really important
12 that there be clear, environmentally sound site plan
13 standards for all development within the W-0 Zone
14 definition. We want to encourage appropriate
15 development standards.

16 The two areas I want to emphasize are the
17 setback. We feel the 20 foot setback is inadequate.
18 It is not based on science. It is not based on
19 ecology. We understand that certain development is
20 appropriate on the waterfront. I dated a rower and
21 athletic coach. I have been on the water. I have
22 spent a lot of time in boats. My comments do not
23 pertain to boathouses, but they pertain to the
24 functionality of a buffer where appropriate, and our
25 comments get into a bit of detail about the need to

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1 account for slope and soil type in defining buffers,
2 and we have a recipe here. This is based on the
3 Department of Health recommendations that they
4 submitted for the Urban Forestry Bill that went before
5 the council over the past year.

6 We feel these are important as my
7 colleague from the Sierra Club mentioned managing
8 runoff into the river. We need to redevelop this
9 waterfront, but we need to do this in a way that does
10 not further impede our restoration goals for the
11 waterfront. We're talking about clean water, fishing
12 and swimming and future goals.

13 Yes, we need to bring people down. We
14 need to increase access. We need to bring certain
15 categories in the list of special uses here, but we
16 need to do this in a way that does not continue to
17 exacerbate our water quality problem. So I recommend
18 that the Commission examine our recommendations for a
19 buffer.

20 The second area is with respect to -- it's
21 actually directly with respect to a proposed text in
22 this proposal, and that is that we require specific
23 low impact development, actually as Bob mentioned
24 early, for any development that is on there, so we're
25 managing runoff from all the parking lots, all the

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1 roofs, etcetera, in a way that does not wash
2 pollutants into the river.

3 And we recommend, and I think my comments
4 actually pertain specifically to Section 905, Planning
5 Office Review, which I have just briefly glanced at.
6 We have eight suggestions here in terms of additional
7 information that we feel developers should provide the
8 Zoning Commission before they are allowed to do
9 development, and that includes information about flood
10 lanes.

11 CHAIRPERSON MITTEN: You need to wrap it
12 up now.

13 MR. WOODWORTH: Okay. Well, I can end
14 there.

15 CHAIRPERSON MITTEN: Well, we appreciate
16 you making specific recommendations, because that is
17 very helpful to us, so we look forward to reading your
18 submission.

19 MR. WOODWORTH: Thank you for the
20 opportunity to speak with you.

21 CHAIRPERSON MITTEN: Thank you. Any
22 questions for these gentlemen? Thank you both for
23 coming down tonight.

24 MR. MORRIS: Thank you.

25 MR. WOODWORTH: Thank you.

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1 CHAIRPERSON MITTEN: Thanks. Now, anyone
2 else who wants to testify in support before we move to
3 the case in opposition? All right. Now, I see a lot
4 of people, not everyone, who signed up in opposition,
5 but a lot of people from the Capital Yacht Club, and I
6 would just ask that there not be redundant testimony.

7 So if you hear something that you want to say and you
8 just want to endorse it, you can just introduce
9 yourself and say I would like to endorse the comments
10 of, you know, my neighbor or whomever.

11 Is there someone here who is officially
12 representing the Capital Yacht Club who is going to
13 take the five minutes? Sir, why don't we start with
14 you, and then let me also ask, and then we'll get to
15 the rest of the folks from the Capital Yacht Club, Mr.
16 Oppmann, Municipal Fish Wharf Lessees, why don't you
17 come down now, Eastern Powerboat, Dean Lindsey? Okay.

18 We will start with you folks and, sir, I am sorry, I
19 don't know your name.

20 MR. NOLAN: Guy Nolan.

21 CHAIRPERSON MITTEN: Could you turn on the
22 mike there for me, Mr. Nolan, Guy Nolan? Okay. You
23 will have five. Each of these gentlemen will have
24 five minutes, so we will start with Mr. Nolan first.

25 MR. NOLAN: Thank you, Madam Chair. The

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1 proposed text amendments created a W-0 Open Space
2 Zone. It appeared to be a very useful tool to provide
3 low density, low intensity zone. However, there are
4 several aspects of the proposal, which seem
5 inconsistent with its intent.

6 These inconsistencies and a December 2002
7 memo from the Office of Planning indicate the intent
8 to apply this new Open Space Zone to a high density
9 area are very concerning to us. The following summary
10 of our concerns, and my written testimony will have
11 more details on these. I will try to summarize
12 things, and I will skip over the concerns that have
13 already been addressed this evening.

14 We see no reason why a low density W-0
15 Open Space Zone should be used in areas where it is
16 obvious that the proposed redevelopment will require
17 much higher density. We are also concerned that
18 granting special exceptions achieves the same effect
19 as zoning businesses on a case by case basis with no
20 oversight and no public involvement.

21 We believe it is inappropriate to define
22 an existing business when this text change does not
23 yet apply to any defined area. The definition of an
24 existing business should be based on the date that
25 particular area was rezoned.

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1 We do not understand the idea of the
2 option of grandfathering a business based on the
3 master business license instead of the Certificate of
4 Occupation. We have identified questions relating to
5 the issuing of certificates of occupation that must be
6 answered before the proposed regulations would come
7 into effect, and Mr. Johnson described those earlier
8 concerning the docks and whether they are supposed to
9 have certificates of occupancy.

10 We do not understand the need to restrict
11 a percent of floating homes and believe the number of
12 floating homes should be increased as part of the
13 mayor's intention to increase the District's
14 population and the partnership that, again, Mr.
15 Johnson had mentioned earlier.

16 We believe that the restriction of the use
17 of a yacht club's clubhouse, so it can only be used
18 for the members themselves would prevent yacht clubs
19 like ours from hosting community events that we
20 believe make us a vital part of the waterfront
21 community.

22 We would like to point out that decisions
23 beyond our control with respect to the development of
24 the waterfront may occasionally make it impossible for
25 our clubhouse, in particular, to be located directly

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1 in front of our docks as is being required by these
2 regulations. As an example, in Southwest Waterfront,
3 at this point, no one knows where our clubhouse may be
4 as part of the redevelopment.

5 We would also like to point out that the
6 notice requirements of the proposed changed Chapter 6,
7 of these regulations, were not complied with, and that
8 this portion of the amendment should not be considered
9 and should be removed from this proposal, at this
10 time.

11 CHAIRPERSON MITTEN: Could you repeat
12 that? I missed it.

13 MR. NOLAN: Chapter 6.

14 CHAIRPERSON MITTEN: Okay.

15 MR. NOLAN: Apparently, that was an
16 oversight of some sort. In conclusion, I believe it
17 is safe for me to say that the members of the Capital
18 Yacht Club would support the creation of a W-0 Open
19 Space Zone if it were being used as a low density, low
20 impact, low height area.

21 However, if our perception that the W-0
22 Zone is to be used in the area of the Southwest
23 Waterfront redevelopment, if that perception is
24 correct, we believe this would be inappropriate.
25 Thank you.

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1 CHAIRPERSON MITTEN: All right. Thank
2 you, Mr. Nolan. Mr. Oppmann?

3 MR. OPPMANN: Thank you, Madam Chair and
4 members of the Commission. I have a testimony in
5 writing. It consists of two pages, which basically
6 asks for clarification given the fact that the
7 property of the people whom I represent at the
8 Municipal Fish Wharf are on federal property, and I
9 attach a three page Report of Title, which indicates
10 that it is federal property.

11 It is my understanding that such federal
12 property would not be subject to the W-0 proposal, and
13 I would like to ask for written confirmation or
14 clarification of that from the Commission.

15 CHAIRPERSON MITTEN: Okay.

16 MR. OPPMANN: So I have four minutes and
17 15 seconds left. Is that correct?

18 CHAIRPERSON MITTEN: Yes.

19 MR. OPPMANN: Okay. Thank you. I would
20 like to mention a few other things that have come to
21 my attention, which I think are appropriate to bring
22 up, at this time. When I was asked if I were in favor
23 or not in favor of the proposal, I didn't know what to
24 say and I said well, I guess I am not in favor of it,
25 because there are existing questions given the way the

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1 process worked in this.

2 My clients were not included in any of the
3 Office of Planning sessions that led up to this and it
4 bothers them, because they are one of the oldest
5 businesses if not the oldest business on the
6 waterfront. They have been there for over 200 years
7 selling fish. National Geographic did a nice article
8 on them last July and so forth. The Washington Post
9 has written about how important they are to the city.

10 To be left out so repeatedly made them
11 wonder what was going on. There is a history of
12 mismanagement at the fish wharf that is really
13 serious, so when people talk about changes, my clients
14 are, I think, understandably gun-shy about this, and
15 the impact on density that the NCRC proposal has,
16 coupled with the diminishment of parking, leads us to
17 have some serious questions about where this whole
18 mess is going.

19 And I think that the testimony that was
20 given last night at St. Augustine's Church was
21 eloquent testimony to the concerns of the community as
22 to what's going on and how fast it's going, and how
23 seldom they have been included in this.

24 So that there is some time left for
25 questions, I would like to say just one last thing.

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1 Mr. Lawson, I believe, began by saying that many of
2 these sites involved here tonight are owned by the
3 National Park Service. Did I understand you
4 correctly, Mr. Lawson or someone?

5 CHAIRPERSON MITTEN: Actually, you should
6 just make your statements.

7 MR. OPPMANN: Okay. And Ms. Blumenthal,
8 Linda Blumenthal from the National Park Service
9 testified that there has been work between the AWI
10 Initiative and the Office of Planning. I am concerned
11 to see a member of the National Park Service on the
12 Board of the Zoning Commission, and I would ask that
13 the entire Commission -- what this appearance creates
14 in the public eye, there are many issues that are
15 going to involve Park Service land, and I think that
16 recusal may be an appropriate way to deal with this.

17 I bring this up, so that it is clear that
18 this is a fair and fully disclosed operation. I don't
19 do so lightly, but this was a point I was trying to
20 make on a procedural basis earlier on, and I apologize
21 if I stepped on the rules of the committee. I had no
22 intention to do so.

23 CHAIRPERSON MITTEN: No, that's fine.

24 MR. OPPMANN: I would also, lastly, like
25 to say Mr. Bastida and Ms. Sanchez have been very

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1 helpful to me today and I appreciate it.

2 CHAIRPERSON MITTEN: Glad to hear it. If
3 you could just hold your seat there and we will get
4 the questions in a moment, and then Mr. Lindsey?

5 MR. LINDSEY: Yes, thank you, Madam Chair
6 and fellow commissioners. I wasn't aware I was going
7 to be up here for five minutes today and my laptop
8 crashed.

9 CHAIRPERSON MITTEN: Well, you're not
10 compelled to take five minutes.

11 MR. LINDSEY: But I will take as much as I
12 can and I don't need my glasses now. My name is Dean
13 Lindsey and I represent Eastern Powerboat Club. We
14 are probably one of the oldest clubs at the beginning
15 of the Anacostia River, and probably now one of the
16 most notorious clubs. We're still trying to get rid
17 of Traffican's boat down there.

18 CHAIRPERSON MITTEN: He doesn't need it
19 right now I don't think.

20 MR. LINDSEY: We're fully in support of
21 the W-0 plan as it was outlined by the ANC with the
22 amendments and some of the tweaks that they can place
23 into the plan. We have been supportive of the Green
24 Marina Initiative and we're very, very active in that
25 program. We have been very supportive of the

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1 Anacostia Initiative Program.

2 We're on board with just about everything
3 that is presented to us, because we are a small marina
4 and we have to stand proud, and that means we got to
5 stand tall and act quick. But as the plan is laid out
6 right now, I do believe that the Eastern Powerboat
7 Organization, which represents about 30, 35 members,
8 will stand behind it and stand behind the changes that
9 have been proposed, and look forward in working with
10 it and hope that it remains pure.

11 If it starts becoming diluted and they
12 start mixing it up and things like that after
13 exchanges are made, then we have got a whole new can
14 of worms, but if it rings pure, then we're behind it
15 100 percent. That's all I have, no more of your time.

16 CHAIRPERSON MITTEN: All right. Thank
17 you. Questions for these gentlemen, Mr. Parsons?

18 COMMISSIONER PARSONS: Mr. Oppmann, how
19 are you?

20 MR. OPPMANN: Fine, thank you, Mr.
21 Parsons. How are you?

22 COMMISSIONER PARSONS: We have worked
23 together in the past. I think I should respond to
24 your concern. Certainly, if the National Park Service
25 comes forward with a proposal to zone a piece of land

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1 that they now own, I will recuse myself.

2 I did not feel that was appropriate in the
3 generic context of this map amendment that we're
4 working on tonight -- text amendment that we're
5 working on here tonight, because it doesn't
6 specifically apply to any of the lands of the Federal
7 Government. I don't know if that makes you
8 comfortable, but that's would I would intend to do in
9 the future.

10 MR. OPPMANN: You say it doesn't apply to
11 any of the specific lands. Couldn't it apply to all
12 of them?

13 COMMISSIONER PARSONS: Only if the federal
14 agency came forward to suggest that they wanted to be
15 subject to zoning.

16 MR. OPPMANN: Okay.

17 COMMISSIONER PARSONS: Which makes your
18 point earlier, that you are on federal land, so you
19 should not be subject to this. I think that was your
20 point.

21 MR. OPPMANN: Exactly, that's my
22 understanding.

23 CHAIRPERSON MITTEN: Well, on that point,
24 it's my understanding that federal property for
25 federal use is not subject to zoning, but federal

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1 property for private use is subject to zoning. But I
2 am going to ask Mr. Bastida to follow-up with
3 corporation counsel and have them give you the
4 definitive answer, because I am sure you would want to
5 hear that from an attorney.

6 MR. OPPMANN: Absolutely.

7 CHAIRPERSON MITTEN: Rather than just me.

8 MR. OPPMANN: And, Madam Chair, if we
9 could get that in writing, we would appreciate that.

10 CHAIRPERSON MITTEN: Mr. Bastida will
11 assist you in getting something in writing.

12 MR. OPPMANN: Thank you.

13 CHAIRPERSON MITTEN: And believe me, if
14 any of the other commissioners thought that Mr.
15 Parsons was not appropriately with us, we would say
16 so. I think we all agree that unless there is a
17 specific proposal before us, it's appropriate that Mr.
18 Parsons join us in the deliberation. So thank you for
19 voicing the concern.

20 MR. OPPMANN: Sure.

21 CHAIRPERSON MITTEN: And giving Mr.
22 Parsons an opportunity to perhaps set other people's
23 minds at ease, as well. A couple of questions for Mr.
24 Nolan and maybe a couple of comments, too, and I will
25 start with one of the comments.

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1 I believe that you may have a
2 misunderstanding about what this special exception is,
3 because I believe you had a concern that it did not
4 include public participation when, in fact, it is a
5 public process. It takes place before a different
6 board, but it is a process just like this in the
7 public. There is notice given, ANCs get involved and
8 so forth, so that is a public process.

9 You raised a good point about the date on
10 which the business was in existence. That is a good
11 point. I did not quite follow your point. After Mr.
12 Johnson had explained to us that some of the -- I
13 don't know, it's the live-aboards or whoever, I don't
14 know who has the business license first, it's the
15 Certificate of Occupancy, but that we needed to
16 acknowledge both and I thought you were suggesting
17 that we should not be acknowledging the business
18 licenses. We should be focusing exclusively on
19 certificates of occupancy.

20 Did I misunderstand you?

21 MR. NOLAN: No, you did misunderstand me.

22 CHAIRPERSON MITTEN: Okay.

23 MR. NOLAN: I can't speak for Mr. Johnson,
24 of course.

25 CHAIRPERSON MITTEN: Okay.

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1 MR. NOLAN: I do think it's inconsistent
2 to rely on a business license, which has nothing to do
3 with zoning. Zoning is keyed, my understanding, to
4 the Certificate of Occupancy, and it seems that that
5 should be the document that decides one way or another
6 when the business came into existence.

7 CHAIRPERSON MITTEN: Okay. Okay. And I
8 think I got the rest of your points, and if any of you
9 had anything to submit in writing, I know we got
10 something from Mr. Oppmann, but, Mr. Nolan, if you had
11 any written testimony, we would appreciate getting
12 that. Anyone else have any questions? Mr. Hannaham?

13 COMMISSIONER HANNAHAM: Just a quickie for
14 Mr. Lindsey. I just wanted some clarification. I
15 understand whose position you're taking and I have the
16 document that you provided, but the fact that the
17 marinas are on federal property will exempt them from
18 zoning considerations, but they are subject to
19 District for health and other agency requirements. Is
20 that so?

21 MR. OPPMANN: Are you directing your
22 question to me or --

23 COMMISSIONER HANNAHAM: I was just asking.
24 You may be exempt from zoning, because you are
25 located on federal lands, but you are subject to

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1 Department of Health requirements and other D.C.
2 Government agencies, regulatory agencies?

3 MR. OPPMANN: Yes, we have regular federal
4 and --

5 COMMISSIONER HANNAHAM: Federal and D.C.
6 health.

7 MR. OPPMANN: -- D.C. health inspections.
8 I'm sorry, I wasn't ready.

9 COMMISSIONER HANNAHAM: I'm sorry. I
10 didn't mean to --

11 MR. OPPMANN: It's quite all right.
12 That's correct. I should say that last week was 90
13 years that Congress officially declared that piece of
14 property to be a fish wharf, 1913, 62nd Congress, and
15 that's a restricted use down there. So whether that
16 constitutes a federal purpose or not may remain to be
17 seen, but we would be glad to provide you -- I have a
18 copy of the act right here in my briefcase, and I
19 would be glad to get a copy to the Commission of the
20 legislation, which set it up as a federal fish wharf,
21 as well as the Supreme Court decision on the entire
22 waterfront, which presumably you have, Morris v.
23 United States from 1899, a 160 page decision before
24 the Supreme Court ruling on the Supreme Court to which
25 our title report refers, the very first paragraph.

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1 COMMISSIONER HANNAHAM: What was the
2 ruling of the Supreme Court? What was the case?

3 MR. OPPMANN: Morris, M-O-R-R-I-S, versus
4 United States, 1899, meeting of the court. They found
5 that the entire waterfront from Fort McNair to the 14th
6 Street Bridge to be federal property, there were some
7 people trying to claim it as private property and that
8 decision is considered the landmark ruling on that
9 part of what was in the Potomac River and is now the
10 Washington Channel, which may or may not be of help.
11 It's a long, rather dusty decision, but it, you know,
12 is what is looked to as --

13 CHAIRPERSON MITTEN: Well, since none of
14 us are lawyers, we probably wouldn't enjoy it.

15 MR. OPPMANN: I wouldn't recommend it
16 unless you want to sleep.

17 COMMISSIONER HANNAHAM: But I would if you
18 could provide us with a copy of the legislation that
19 you mentioned.

20 MR. OPPMANN: Surely, I would be glad to.
21 I will get that down tomorrow by fax.

22 COMMISSIONER HANNAHAM: Okay.

23 MR. OPPMANN: It's only one page.

24 COMMISSIONER HANNAHAM: That's fine. I
25 would appreciate that.

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1 MR. OPPMANN: Surely.

2 COMMISSIONER HANNAHAM: Thank you.

3 MR. OPPMANN: Thank you.

4 COMMISSIONER HANNAHAM: Thank you, Madam
5 Chair.

6 CHAIRPERSON MITTEN: Anyone else, anyone
7 else have questions? All right. Thank you,
8 gentlemen. I don't know what POWYC is, although, it's
9 some kind of yacht club, I bet. Mr. Grubaugh, why
10 don't you come down, and we also have Liz Grubaugh
11 from GPSA, which I take it is a different group, all
12 right, and Eric Slaughter from Capital Yacht Charters.
13 Mr. Slaughter? Oh, okay. Why don't we start with
14 you, Mr. Grubaugh, and you will have five minutes.

15 MR. GRUBAUGH: Madam Chairman and
16 committee members, thank you very much for an
17 opportunity to address the zoning issue in public
18 forum. I rise in opposition to the zoning issue. I
19 have to ask a couple of questions as I go along,
20 because there is a concern.

21 Last night in a public forum in which the
22 Southwest Development Plan was presented, which also
23 came out of the Office of Planning, Mr. Parsons was
24 there to represent the National Park Service in that
25 forum to those of us from the public that also

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1 attended that forum, and this same Office of Planning,
2 of course, is introducing this zoning regulation,
3 which was talked about extensively last night, as
4 well, in the context of the redevelopment of the
5 Southwest Waterfront.

6 So that is why there is a lot of ambition,
7 if you will, or concern of the application of the W-0
8 Zoning Requirements to the Southwest Waterfront as it
9 currently exists, so I just wanted to bring that to
10 the Chair's attention.

11 We applaud the attempt at the zoning of
12 undeveloped areas along the Washington Waterfront and
13 we applaud the additional planning and development
14 land side in the southwest district. We are concerned
15 about the encroachment on the actual waterway itself.

16 And what I would like to point out is in
17 the presentations, and the artists' conceptions of the
18 display that was given this evening, one of the
19 examples given of one of the exceptions was boat
20 construction, and in that, the display that was
21 presented to this Commission was that of,
22 approximately, a 14 foot wooden dory being built in an
23 area. And in fact, that language was brought to the
24 Office of Planning, I believe, by the National
25 Maritime Heritage Foundation who wanted it in this

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1 Zoning Regulation, so they can build a 100 foot tall
2 ship in that area.

3 Also, the Office of Planning and the
4 National Capital Revitalization Commission is
5 currently discussing building that tall ship right
6 there in southwest right next to the Gangplank Marina
7 between the channel in and the current Zanzibar Club.

8 So the addition of a new shipyard in a residential
9 area becomes questionable as to why this Zoning
10 Regulation is being put forward. So these are some of
11 the concerns we have.

12 I would also like to point out, and
13 although you don't have opportunity to view it right
14 now, the proposal that was presented in the Southwest
15 Waterfront last night, in each and every one of the
16 artist depictions of the boats in the channel, none of
17 the boats are large enough to be live-aboards, which
18 means just the live-aboard population would disappear
19 just like the Capital Yacht Club disappeared from all
20 the planning documents, hypothetically.

21 It's kind of hard to understand why the
22 District in a time that we're looking at budget
23 shortfalls, this, that and the other, would want to
24 deplete a tax base or get rid of a tax base, you know.

25 Those of us that live down there, we pay our taxes in

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1 the District. We pay our car tags in the District.
2 We pay our groceries, you know, or do our regular
3 economic basis right here in the District. So I kind
4 of have trouble understanding why that would be done.

5 So it's the same Office of Planning
6 presenting this W-0 Zoning Regulation here tonight
7 that also presented that plan to us last night. So
8 right, wrong or indifferent, it's almost like I
9 understand you're an independent Commission and you're
10 only looking at the zoning as it's being presented to
11 you, but when you look at the entire picture, that's
12 where we get some grave concerns.

13 CHAIRPERSON MITTEN: I understand.

14 MR. GRUBAUGH: And again, just one of the
15 things I wanted to point out. So we are opposed to it
16 in its current form. If it strictly was applicable to
17 the undeveloped areas, no problem, but the ability to
18 come in and rezone an existing area causes concern,
19 Port of Washington Yacht Club. Thank you very much
20 for your time.

21 CHAIRPERSON MITTEN: Thank you, Mr.
22 Grubaugh. Ms. Grubaugh?

23 MS. GRUBAUGH: Yes, my name is Liz
24 Grubaugh. I am representing the Gangplank Slipholders
25 Association. I am a resident of the Gangplank Marina

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1 here in southwest. While we want to welcome both land
2 side filament in protecting our natural resources, it
3 should not be at the expense of the watermen and those
4 that chose the aquatic lifestyle.

5 I am concerned that the city chooses not
6 to recognize us as a community and wants to place
7 restrictions they would not attempt to in a landborne
8 residential area. I am deeply concerned about
9 ambiguous language within the proposed W-0 Zoning
10 proposal before us.

11 In some areas, it addresses grandfathering
12 existing business, such as those in the Washington
13 Channel and proceeds to negate that language, which
14 references to the marinas as a matter-of-right in W-1,
15 W-2 and W-3 as long as they are in accordance with the
16 Section 900, the W-0 verbiage.

17 They restrict the ability to live aboard
18 for those of us who choose to do so to a clandestine
19 percentage predicted on some unknown facts. Why
20 restrict the tax base and reduce the amount of
21 generated income to the local economy and place in it
22 transients who may or may not come to the southwest
23 and the waterfront based on the weather security or
24 the slow economy?

25 It would also restrict the many marina

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1 businesses required to ensure comfortable and safe
2 boating in the Washington Channel, including minor
3 repairs, canvas upholstery and manufacture. Thank
4 you.

5 CHAIRPERSON MITTEN: Thank you. And Mr.
6 Slaughter?

7 MR. SLAUGHTER: Yes, thank you very much.

8 I am Eric Slaughter. I am the owner of Capital Yacht
9 Charters. We have two charter yachts operating off of
10 Washington Channel. We make use of a number of
11 marinas on other coastal areas in the watershed,
12 Washington, D.C.

13 I was going to talk about one of the
14 things that other people have already said. I do want
15 to support my ANC commissioner in full, but I do have
16 one question that maybe you can clarify for me. It
17 has been implied, I believe, that federal properties
18 not necessarily would be covered by the W-0 unless a
19 specific action came forward where a private holder
20 was going to become involved.

21 But there is at least one parcel, maybe
22 others, on our waterfront where the federal ownership
23 has been retained. However, through a special act,
24 the District is the managing entity of that property
25 and is in charge of its leases. However, the title

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1 has not been transferred, and I am curious as to
2 whether the W-0 would apply to those properties, as
3 well or not.

4 CHAIRPERSON MITTEN: What is the use being
5 made of the property?

6 MR. SLAUGHTER: It's a marina, it's a
7 marina. It's an existing marina.

8 CHAIRPERSON MITTEN: I think in some
9 circumstances we have property that is federally owned
10 and it is now in private use, and unless there is some
11 change to that use or it is expanded, zoning doesn't
12 become an issue.

13 MR. SLAUGHTER: Thank you.

14 CHAIRPERSON MITTEN: Just because it is
15 sort of -- you know, no change triggers nothing, so
16 it's just status quo in those situations.

17 MR. SLAUGHTER: Thank you, thank you.

18 CHAIRPERSON MITTEN: Any questions for
19 this panel?

20 VICE CHAIR HOOD: Madam Chair, I just
21 wanted to ask Mr. Grubaugh. Did I pronounce your name
22 right, Grubaugh?

23 MR. GRUBAUGH: Yes, sir

24 VICE CHAIR HOOD: You mentioned the ship.
25 What is the subject matter of the ship? What kind of

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1 ship is it?

2 MR. GRUBAUGH: Yes, sir, the ship
3 enterprise. It's a 100 foot sailing vessel to give us
4 a tall ship much like the Pride of Baltimore. In
5 fact, I believe it's built on the same plans as the
6 Pride of Baltimore, and they also have in their far
7 reaching plans the opportunity to build a second ship,
8 and that would be a replica of the Pearl, which as we
9 know was the slave ship that left the 7th Street docks
10 back in the 1800s.

11 Both of these ships would be built at that
12 facility if that were provided for and approved, and
13 that's why it was put into this Zoning Regulation. So
14 we're not talking about a little 14 foot dory that was
15 shown to the Commission here on their photograph, and
16 I think it's only fair to point these things out to
17 the Commission as they review this. Thank you.

18 VICE CHAIR HOOD: Okay. Let me ask you a
19 question. This whole waterfront initiative has been
20 going on for some time. Were you involved with the
21 process? Notwithstanding the W-0, but before the W-0
22 even came up as a proposal, were you involved with the
23 process all the way through? When did you come on
24 board?

25 MR. GRUBAUGH: Sir, I have been involved

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1 with the process, because I am the individual that
2 sued the previous owners of the marina for
3 depreciating the value of the marina at the expense of
4 the landholders down there, at which time a consortium
5 of owners down there, boat owners, wanted to attempt
6 to buy the marina and upgrade the marina and make it a
7 classy project. In the stead of doing that, the NCRC
8 took the property.

9 VICE CHAIR HOOD: Okay.

10 MR. GRUBAUGH: And now comes down with
11 these grandiose plans at the expense of those of us
12 that are down there, but yes, sir, I have been
13 involved in this for a long time.

14 VICE CHAIR HOOD: That was all I wanted to
15 know. You gave me a little more than what I -- I was
16 just curious. The other two, have you all been
17 involved with this process? Well, I am sure you have,
18 Ms. Grubaugh, but --

19 MR. SLAUGHTER: Yes, sir, very much. I
20 have been in the waterfront since 1979 and I have been
21 very active and supportive of the Office of Planning's
22 efforts.

23 VICE CHAIR HOOD: Okay. Thank you. Thank
24 you, Madam Chair.

25 CHAIRPERSON MITTEN: Thank you. Anyone

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1 else, questions? Mr. Hannaham?

2 COMMISSIONER HANNAHAM: Thank you, Madam
3 Chairman. Just a quickie follow-up to the ships.
4 What is so peculiar about their being constructed in
5 southwest Washington? Could they be constructed
6 someplace else? I mean, what is the special
7 association with southwest Washington as the
8 construction site?

9 MR. GRUBAUGH: I don't know and I would
10 agree with you 100 percent, sir, except the
11 presentation has been made and I have escorted the
12 people up on the operation line up there at the site.

13 It has been explained that they are in current
14 negotiations with the NCRC as soon as they can get it
15 zoned and get it prepared to build a tall ship there.

16 It's no secret. Eric knows it, you know.

17 CHAIRPERSON MITTEN: I think Mr.
18 Grubaugh's point is when you think of a boat building,
19 don't just think of a small boat, and he wants us to
20 think about compatibility of the variety of uses that
21 would be permitted in this zone, and whether or not
22 building a large ship is appropriate.

23 MR. GRUBAUGH: The point I'm getting at,
24 sir, in a current residential area, which I am sure
25 you probably live in --

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1 COMMISSIONER HANNAHAM: Right.

2 MR. GRUBAUGH: I think you would probably
3 raise a red flag if somebody come in next door and
4 decided to build a 100 foot wooden boat next to you,
5 which meant a little pounding and sawing and this,
6 that and the other and things of that magnitude. We
7 are not considered a residential area by the city.
8 They don't even treat us like a community, so they
9 think they can do whatever they want to down there.

10 COMMISSIONER HANNAHAM: That was why I was
11 asking the question, because I thought there probably
12 are other places that will probably be more suitable.
13 I was just wondering what was so special or unique
14 about that particular location for the construction.

15 MR. GRUBAUGH: It might be a good question
16 to ask if that request for zoning comes up.

17 COMMISSIONER HANNAHAM: Is there
18 educational or historical or benefits to be derived
19 from this thing?

20 MR. GRUBAUGH: Yes, sir, it will be used
21 as an educational purpose with the city. My
22 understanding is the idea is to build the Pearl, which
23 will be utilized and pretty much stationed here within
24 the District, and the Spirit of Enterprise will then
25 be stationed here in the District, but will go up and

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1 down the Chesapeake and the coast and the various
2 ports of call representing the District and
3 fundraising activities, things of that magnitude.

4 COMMISSIONER HANNAHAM: So this will be a
5 District Government sponsored --

6 MR. GRUBAUGH: I believe it's a private
7 enterprise.

8 COMMISSIONER HANNAHAM: Okay.

9 MR. GRUBAUGH: I don't believe it's
10 necessarily District Government sponsored.

11 COMMISSIONER HANNAHAM: Okay.

12 MR. GRUBAUGH: My understanding is they
13 have to raise 5 million dollars for matching funds.

14 COMMISSIONER HANNAHAM: Okay. Thank you
15 very much.

16 MR. GRUBAUGH: Yes, sir.

17 CHAIRPERSON MITTEN: Thank you. Thank you
18 all for coming down tonight. Okay. Mr. Barr, William
19 Barr and Steven Cohn, Cohn, sorry, Janet Miles. Now,
20 each of you will have three minutes.

21 MR. BARR: Yes, ma'am. Now, Madam Chair,
22 I won't take my three minutes. My points have been
23 very well represented by Mr. Johnson and Commodore
24 Nolan. I will just add that the points, the major
25 point hurdling, stumbling block I had was squaring the

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1 zoning proposal with other plans for the waterfront,
2 as so many people have also expressed, and I am not
3 sure if there is any coordination there at all.

4 I just want to emphasize that, you know,
5 following the meeting last night, if you all had
6 watched Channel 9, you would hear that construction
7 could start as soon as 18 months from today on
8 demolition on the waterfront, and that sounds kind of
9 ominous to us.

10 CHAIRPERSON MITTEN: All right. Thank
11 you. Mr. Cohn?

12 MR. COHN: Cohn, right, thank you. I
13 think I support the comments made by Mr. Nolan also
14 said in opposition to the plan or the zoning plan. I
15 wanted to reflect some of the things that Mr. Morris
16 from Sierra Club said about the water runoff and some
17 of the things that you overlooked was that the Capital
18 Yacht Club has supported the Environmental Protection
19 Agency with this Storm Water Runoff Plan.

20 And he overlooked that point that every
21 entity on the waterfront has to have that plan and the
22 Capital Yacht Club has that plan and supported the
23 Green Marina Initiative. The club has also been in
24 existence since 1892. We are a historic landmark, but
25 the building itself is not, and that is all I have to

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1 say. Thank you.

2 CHAIRPERSON MITTEN: Thank you, Mr. Cohn.

3 And, Ms. Miles, I need you to turn on that microphone
4 for me.

5 MS. MILES: Okay. Thank you. My name is
6 Janet Miles and I am a proud member of the Capital
7 Yacht Club community and have been a member since
8 1992. I am speaking today representing the members
9 who could not be here and the larger Washington
10 Waterfront community who are deeply concerned about
11 these zoning changes.

12 I am concerned about the possibility of
13 spot zoning, a highly unethical process by which local
14 communities, such as ours, are displaced to make room
15 for commercial special interests. The Capital Yacht
16 Club is more than a collection of boats. As Mr. Cohn
17 said, we are a community that stretches back 111
18 years, and I am here to make sure that our historic
19 organization is respected.

20 It seems that the only reason to apply the
21 W-0 regs to this zone is to demolish property values
22 for easy condemnation. And moreover, D.C. Official
23 Code 641.02 states that the regulations should
24 encourage stability of land values.

25 Obviously, a W-0 Zone in southwest will

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1 have a devastating affect on land values. Let me
2 repeat that the Capital Yacht Club members are paying
3 close attention to the possibility of spot zoning, a
4 practice that we understand to be improper, if not
5 illegal.

6 And then there is the basic fairness to
7 our community. The retroactive effect in 11 DCMR
8 901.6 is illegal and inconsistent with the statute and
9 existing regulations. I want to repeat the testimony
10 of others that the D.C. Official Code Section 6-
11 641.06A states that a lawful use of a building or
12 premises preexisting the adoption of a regulation is
13 lawful.

14 It is clear that the language does not
15 allow for retroactive application of a zoning
16 regulation. We thank you for hearing our concerns, my
17 concerns on this matter. You have our promise that we
18 are paying close attention to this matter, and we
19 trust that you will be fair to our community as this
20 process continues to unfold. Thank you very much for
21 listening.

22 CHAIRPERSON MITTEN: Thank you, Ms. Miles.

23 Any questions for this panel, any questions? All
24 right. Thank you all for coming down. Michael
25 Ellison, Thomas Rainy, it looks like. Pardon me?

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1 MR. ELLISON: He will not be speaking.

2 CHAIRPERSON MITTEN: Oh, will not be
3 speaking? Thank you. Will Whitehouse, Will
4 Whitehouse, oh, sorry, Scott Schramm. We will start
5 with you, Mr. Ellison, whenever you're ready.

6 MR. ELLISON: Thank you, Madam Chair.
7 First of all, I would like to say that I personally
8 support the overall plan that is being proposed by the
9 Office of Planning. What I do not support is how it
10 is handled and being handled in the Southwest
11 Waterfront.

12 So the question I have got is why are we
13 here? I mean, afterall, rezoning of W-0 would have
14 actually no effect at all, because all of the business
15 that are on the Southwest Waterfront as they stand
16 actually conform to the special exemptions that we
17 would have to apply for if it were rezoned.

18 So what is the effect of this? Why is
19 this happening? It seems that there is an alternate
20 agenda. Just as an example, it resorts to current
21 businesses to apply for special exemptions, so why has
22 this been requested? The Office of Planning's lack of
23 communication with the current waterfront businesses
24 and their official actions are frightening to us all.

25 As an example, as you already heard, the

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1 Capital Yacht Club has been on the waterfront for 111
2 years. The current proposed rezoning action, as it
3 stands, has already injured them by forcing their
4 tenant to leave due to the uncertainty of the future.

5 That same uncertainly is going to make
6 finding another tenant difficult. Just by the fact
7 that this meeting is taking place, we have been
8 injured. The value of the land has been depreciated
9 to that effect. We have a lease that is still running
10 for 60 years. We should have something to say about
11 what's going on here, but we have not been contacted
12 until yesterday by the Office of Planning. So have we
13 had anything to input? No, we have not. We are
14 concerned.

15 Look at the proposal as it stands. There
16 are open spaces down there now in the waterfront.
17 There is park land. The parks are not maintained.
18 There is trash strewn everyplace. Members of our
19 yacht club pick it up. We have even put out our own
20 trash bins, because the trash situation is so critical
21 down there.

22 Why should we expect that anything else is
23 going to change? If you designate more park land,
24 will it be taken care of? I don't think so. Look
25 around, the city is broke. Where is the money going

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1 to come from to cut more grass, to pick up more trash,
2 to do this construction?

3 Yet, if these proposals go through, the
4 net effect, the destruction of businesses, the
5 destruction of ways of life will have already taken
6 place before "the money can't be found." Down in
7 southwest is already a very wide promenade, a 40 foot
8 wide promenade along the Washington Channel.

9 CHAIRPERSON MITTEN: I need you to wrap it
10 up. You're just down to your last few seconds.

11 MR. ELLISON: Okay. Essentially, what I
12 am saying is to Mr. Hood in particular. You want
13 solutions? The solution is that this proposal as it
14 pertains to southwest is not complete. It is not
15 whole and it shouldn't even have been presented to
16 you. Send it back. Send it back to the Office of
17 Planning to have some of these questions answered.
18 Then bring it forward again and consider it. Thank
19 you.

20 CHAIRPERSON MITTEN: Thank you, Mr.
21 Ellison. Mr. Whitehouse?

22 MR. WHITEHOUSE: Good evening, Madam
23 Chair, members of the Commission. My name is Will
24 Whitehouse and I am a member of the Capital Yacht
25 Club, and I have been active down on the Washington

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1 Waterfront for the past 23 years, and had a presence
2 there almost on a daily basis.

3 Over the past 23 years, I have seen many
4 changes. Yet, one thing that has remained consistent
5 is the live-aboard community, which is really unique
6 down on this waterfront, particularly at the Gangplank
7 Marina. The benefits of this community are twofold to
8 the area at large.

9 You have first the security of the local
10 area here. We mean the boats and the people who live
11 in the area. In past winters when we had very cold
12 winters, residents saved 11 boats from sinking in one
13 day, whereas over at other marinas that were non live-
14 aboards, they had multiple whole losses all the way
15 down, environmental impact, everything. They also
16 police the area and keep it very clean. If anybody
17 puts anything in the water, we're the first ones to
18 make a phone call, because we don't like our area
19 dirtied up.

20 The second thing is Homeland Security
21 protection, which is a new dimension that has come out
22 of this. The Coast Guard has implemented Eyes on the
23 Potomac Program down here, and so in regards to
24 maintaining vigilance on the infrastructure, bridges,
25 river and so forth, our transportation.

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1 We know what's there. We know who belongs
2 there. We watch and, I mean, we watch like crazy, and
3 as the chair of the security committee for Capital
4 Yacht Club, we have, for example, just us, put a
5 camera system in where we can watch our whole area and
6 videotape it. And we have close relationship with the
7 D.C. Police, both on the boats down there, first
8 district and the fire department down there.

9 So really enclosing on this the thing that
10 others say is that to limit the live-aboard community
11 down there is to limit the level of security as an
12 asset in this area, which is more like an extension of
13 a beat cop who knows his people. That's it. Thank
14 you.

15 CHAIRPERSON MITTEN: Thank you, Mr.
16 Whitehouse. And Mr. Schramm?

17 MR. SCHRAMM: Good evening, Madam Chairman
18 and members of the Board. My name is Scott Schramm.
19 I am a proud member of the Capital Yacht Club, as well
20 as a resident of the District of Columbia. I can only
21 echo the concerns that we have heard so far from my
22 fellow yacht club members about W-0 proposed land
23 changes and what it will do to land values and
24 diminished land values in our area.

25 Our concern, I think, comes from probably

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1 what you have heard so far from some of the
2 presentations we have seen from the NCRC and some of
3 their proposed changes that simply eliminate us from
4 the picture. What will happen to us? What will
5 happen to our clubhouse? What will happen to our
6 community that has been spoken of this evening? This
7 is a plan.

8 CHAIRPERSON MITTEN: Sorry, they didn't
9 reset the clock.

10 MR. SCHRAMM: I can only echo the fact
11 that our club has been in existence for 111 years, and
12 we are part of the maritime history of this area.
13 Eliminating this would be a gross injustice, and we
14 can only see fear, at this point, of W-0 being imposed
15 against us to potentially eliminate us from the
16 overall development plan. Thank you for your time.

17 CHAIRPERSON MITTEN: Thank you. Any
18 questions for this panel. I understand the concern
19 that you have, because what you are seeing is this
20 very large proposal, and we are focusing tonight on
21 just a potential tool to be used in certain places,
22 and at the moment, our Commission is only thinking
23 about this tool. We're not thinking about all the
24 things that you are concerned about. So we're
25 sensitive to the things that you are saying, but there

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1 are just certain limitations on this process.

2 MR. ELLISON: We understand that it's only
3 a tool for the future and again, we agree with the
4 future, but the tool can be used as a weapon, as well,
5 and we were just looking for assurances that it will
6 not and cannot be used as a weapon against us. That's
7 all.

8 CHAIRPERSON MITTEN: I am not sure you can
9 get those assurances from the Commission. If we
10 choose to create the zoning category to begin with,
11 then it will be again on a case by case basis where we
12 choose to map it, and you have heard things here
13 tonight that would suggest that it would be difficult
14 to map it in an area, as Mr. Gross said, that is in
15 the comprehensive plan currently designated for low
16 density commercial, that that would be inconsistent
17 and we are not allowed to map things that are
18 inconsistent.

19 MR. ELLISON: Exactly, ma'am, but remove
20 the Southwest Waterfront from that overall zoning W-0
21 Plan. That's all it would take.

22 CHAIRPERSON MITTEN: Okay, fine. Thank
23 you. Thank you, gentlemen. Mr. Ellingsworth, Mr.
24 Kennedy, Peter Kennedy and I think we actually have
25 four seats up there, Andrea Storie and Marvin Storie,

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1 one or both of you.

2 MS. STORIE: My comments were covered by
3 Mr. Grubaugh and Mr. Lindsey.

4 CHAIRPERSON MITTEN: Okay, Mr. Storie
5 then, you need to come up to the table, because we
6 need to get you on the mike, and I would just say
7 that, for the record, that Ms. Storie was just
8 associating herself with the comments of others, so
9 that we get your notion on the record there. So we
10 will begin with Mr. Ellingsworth, and just so that Ms.
11 Sanchez knows, is she there?

12 MR. BASTIDA: She has left.

13 CHAIRPERSON MITTEN: Okay. When it's Mr.
14 Storie's turn, he is representing a different yacht
15 club. This is a yacht club that --

16 MR. STORIE: That's correct.

17 CHAIRPERSON MITTEN: Okay.

18 MR. STORIE: District Yacht Club, and
19 actually the Potomac River Boating Association.

20 CHAIRPERSON MITTEN: Okay. When it's your
21 turn, we will give you five minutes then. Go ahead,
22 Mr. Ellingsworth.

23 MR. ELLINGSWORTH: Thank you, Madam
24 Chairman. My name is William Ellingsworth. I, too,
25 am a member of the Capital Yacht Club and I have had a

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1 presence on the Washington Waterfront in southwest for
2 23 years.

3 I agree, and I am not going to go into my
4 statement, because I agree with virtually everyone who
5 has spoken out in opposition to the W-0 Zoning. I
6 think that there may be some misunderstanding from
7 what I am hearing that why we're concerned, we're
8 bringing up a lot of points, but the points are that
9 our future is somewhat uncertain and we feel that the
10 W-0 Zoning is giving carte blanche to the folks down
11 there that want to move the small businesses, the
12 small community organizations out in favor of larger
13 places, and we are making it easier.

14 It seems as if a 111 year presence is not
15 important, and we are a major part of the historical
16 Washington Waterfront. We are a part of the
17 community. They have mentioned the things that we are
18 involved in, but these are important things, the
19 Police and Fireman's Picnic, the Cruise for Kids, the
20 Cherry Blossom Parade, the Parade of Lights at
21 Christmas time.

22 We are one of the reasons that people come
23 to the waterfront to see the boats, and we feel that
24 it would be very nice to have a high rise building
25 with expensive restaurants at the expense of a small

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1 yacht club or a small restaurant, and that is our
2 major concern, that what we're doing is giving carte
3 blanche to these folks to move us out with a W-0
4 Zoning.

5 And we hope that people will look a little
6 further than a high rise building with an expensive
7 restaurant in it and see that we are part and parcel
8 of the Washington Waterfront community, and for that
9 matter, a part of the entire metropolitan community.
10 We take care of the water that we live on. We take
11 care of the community that we live in, and we hope
12 that that will be kept in mind when you're thinking
13 about W-0 Zoning. Thank you.

14 CHAIRPERSON MITTEN: Thank you, Mr.
15 Ellingsworth. Mr. Kennedy?

16 MR. KENNEDY: I am Peter Kennedy. I am a
17 member of Capital Yacht Club, and there is not much
18 else I can say connected with everything else that has
19 been said. However, this may be a tool of yours to
20 use, make good use of the tool. Think of the long
21 range, not just the short range, and that is one thing
22 that I think that really needs to be understood by the
23 panel here is make sure that decisions you make are
24 really ones that you think are good long term, not
25 short term. Thank you.

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1 CHAIRPERSON MITTEN: Thank you, Mr.
2 Kennedy. And Mr. Storie?

3 MR. STORIE: Thank you, Madam Chairman and
4 the members of the Commission. My name is Marvin
5 Storie. I represent the District Yacht Club, one of
6 the Anacostia River clubs, and also the Potomac River
7 Yacht Clubs Association, which represents 21 yacht
8 clubs along the Anacostia and Potomac Rivers.

9 In general, we are very supportive of the
10 concept of the plan and what Mr. Lawson has done. We
11 have spoken with him and emailed back and forth to him
12 some ideas. He has incorporated several of our
13 thoughts initially. However, we still have concerns
14 with the way it is written and what it has.

15 It has already been voiced by several and
16 we support what they have said about this problem with
17 the setbacks, and allowing room for the trail bikeway
18 areas in front of these clubs with minimum land space.

19 Also, in the case of the District Yacht Club, in the
20 case of Eastern Powerboat Club, and of course in the
21 case of the Anacostia Marina, Tommy Long's old
22 facility where you have operating marine railways.

23 It becomes a very strong safety hazard to
24 have the public going along the riverfront where you
25 have marine railways. It's a real hazard and it's

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1 also a security issue when you have a boat pulled up
2 on a railway and you have the public access to be able
3 to come along in there. So just something to keep in
4 the back of your mind when you look at how this is.

5 I think the Park Service, National Park
6 Service representative indicated that a suggested
7 direction would be to route this behind the
8 facilities, and this might be considered also for
9 those areas where you have that.

10 As for the other issues, we support what
11 has been said by Capital Yacht Club and the concerns
12 they all voiced, and I won't go into any of that
13 further. There is no reason to repeat it. I think it
14 has been well said before, and thank you very much.

15 CHAIRPERSON MITTEN: Thank you, Mr.
16 Storie. Any questions for this panel? Mr, Parsons?

17 COMMISSIONER PARSONS: Mr. Storie, I guess
18 you have learned here tonight that this would not
19 apply to any of the yacht clubs on the Anacostia, and
20 that they are on federal properties.

21 MR. STORIE: I understand that, Mr.
22 Parsons. The question there or the worry that we have
23 there is that there have been previous situations
24 where the National Park Service has turned big
25 management, not the ownership, of the property areas

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1 over to -- could be to District of Columbia Government
2 to manage that property.

3 If that happens, and it's conceivable that
4 that could happen, considering the development plan
5 that Mr. Lawson has shown for going up the Anacostia
6 Riverside, and so that then becomes a serious worry or
7 a concern that they could have if this was a
8 discussion that the District of Columbia and the
9 National Park Service got into in mapping.

10 COMMISSIONER PARSONS: Because District
11 property is subject to zoning?

12 MR. STORIE: That's correct, and also that
13 as the special use permits and the leases, at least
14 the ones that I have seen, the permittees, lessees,
15 have to follow the local regulations. That's in the
16 permit. So if you establish a local regulation, then
17 -- and this is normal case.

18 I just retired from the U.S. Forest
19 Service and I was quite involved in the same type of
20 thing the National Park Service does, and we worked
21 very closely to make sure that the rules that anybody
22 got on with federal property were in parallel and
23 matched up as closely as possible with whatever
24 regulations that the local Government was requiring,
25 and so I could see that being impressed upon.

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1 COMMISSIONER PARSONS: Thank you.

2 CHAIRPERSON MITTEN: Anyone else?

3 VICE CHAIR HOOD: Yes, Madam Chair. I
4 just wanted to say, Mr. Ellingsworth, actually, I
5 probably should have asked Mr. Ellison. Since he's
6 not at the table, Mr. Ellingsworth, obviously you have
7 not had a lot of contact with the exception of
8 whatever went on last night at this meeting.

9 Was that your first time hearing about
10 these proposed regs?

11 MR. ELLINGSWORTH: Well, I have been aware
12 of them, but by hearsay from other sources, but have
13 never had any contact with the people in the Planning
14 Commission or with the NCRC.

15 VICE CHAIR HOOD: So you haven't had a
16 formal presentation of this?

17 MR. ELLINGSWORTH: No, we have not, and I
18 don't know that the yacht club has officially
19 requested one, but we would certainly, I think, be
20 open to a presentation. As a matter of fact, I do
21 know that the commodore of the yacht club, who spoke
22 hear earlier, got his first look at the overall plan
23 last night, and I think that we would have liked to
24 have had a little more time to look at it.

25 VICE CHAIR HOOD: Thank you, Mr.

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1 Ellingsworth. Mr. Kennedy, you mentioned to make sure
2 we make good decisions. I can tell you that it's
3 always good to testify and come down and speak on
4 issues, because when I looked at the regulations, I
5 looked at the Waterfront Open Space and Recreation, I
6 start running my own imagination and it ran wild, but
7 I can assure you that this Commission, at least from
8 my standpoint, I am sure my colleagues agree, we don't
9 take any testimony we heard lightly.

10 MR. KENNEDY: We certainly hope so.

11 VICE CHAIR HOOD: We can assure you of
12 that.

13 MR. KENNEDY: That's one of our plans.

14 VICE CHAIR HOOD: I am not saying it's
15 going to go your way, but I can assure you that --

16 MR. KENNEDY: That's not expected.

17 VICE CHAIR HOOD: -- we are not taking
18 this lightly, because this, what I am hearing tonight,
19 is definitely a surprise to me.

20 MR. KENNEDY: So was this. Thank you.

21 VICE CHAIR HOOD: I guess I owe you one,
22 but you got --

23 CHAIRPERSON MITTEN: All right. Thank
24 you, gentleman. Erin McKeon and Robert McKeon and
25 Marian Raup.

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1 MS. RAUP: Raup.

2 CHAIRPERSON MITTEN: Raup. Go ahead.

3 MS. McKEON: Good evening. I am Erin
4 McKeon. I lived in Washington, D.C. for 10 years. I
5 have had a boat berthed in the Southwest Waterfront
6 for the past six, first at the Gangplank and now at
7 the Capital Yacht Club. My boat is a classic
8 Criscraft. It is a 1968, 47 foot Criscraft Commander,
9 quite beautiful if I do say so myself. I actually won
10 an honorable mention in the Parade of Lights this last
11 Christmas.

12 CHAIRPERSON MITTEN: Congratulations.

13 MS. McKEON: We were very proud of our
14 boat then. I have for the past six years been an
15 active member in the waterfront community. I have
16 also been an elected leader at Capital Yacht where I
17 serve as secretary, as well as a member of the board
18 of directors.

19 As you have heard, Capital Yacht Club has
20 been around for 111 years and we have a long,
21 distinguished history of community service where we
22 have hosted every single year the Cruise for Kids for
23 the Easter Seals where we take disabled children out
24 and give them rides on boats.

25 We host annual dinners for the police and

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1 firemen, and we have been very active members of the
2 community. We have also signed the Clean Marina
3 Pledge. Every single member here from the yacht club
4 has signed a pledge not to in any way harm the waters
5 on which we live. We have vowed not to discharge any
6 harmful substances into the water, and we have been
7 very much a part of the community.

8 One of the things that I am most proud
9 about my yacht club and what we do is that we host
10 boats from around the world who come here to visit the
11 city, who come to our marina. Every year, we host any
12 of a number of diplomats and other dignitaries, most
13 notably, in my mind at least, being Eric Clapton
14 brings his beautiful boat into our yacht club at least
15 once every two years.

16 I do have and I will give for the record a
17 copy of a recent article in Chesapeake Bay Magazine
18 where our yacht club was mentioned as a site deemed to
19 be worthy of visiting in and of itself, that the yacht
20 club is itself a draw to the city, not only the
21 wonderful attractions that we have as being the host
22 to the nation's capital, but also the marina itself.

23 Unfortunately, in our time in Washington,
24 we have been at times displaced and otherwise moved
25 around by plans to develop the waterfront. We have

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1 been moved in the past. Our clubhouse was demolished
2 for waterfront development plans back in the '70s.
3 Two of our docks were removed in order to make way for
4 the Metro line, and we as a yacht club were displaced
5 at those times. We understood that this was needed
6 for development, and we were happy to give the city
7 the ability to do that.

8 CHAIRPERSON MITTEN: You're going to need
9 to wrap it up, because your time is getting short.

10 MS. McKEON: The summary of what is going
11 on here is that when we look at the W-0, we think it's
12 great. I imagine what it would look like around
13 Columbia Island, the marina in front of the Pentagon,
14 and if this is actually what you are going to do in
15 the waterfront, we would love it. We just don't buy
16 it. We don't buy it. We don't think that that's what
17 the plan is.

18 CHAIRPERSON MITTEN: All right. Thank
19 you. Mr. McKeon?

20 MR. McKEON: Hi, my name is Robert McKeon.
21 If you look at the Office of Planning memorandum that
22 was recently submitted, you will notice that it says
23 that the zoning shall apply to such lands that are
24 leased, so that they contain private enterprises on
25 federal land.

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1 CHAIRPERSON MITTEN: What are you reading
2 from there?

3 MR. McKEON: It's section 7, applicable
4 areas, page 3. It's the memorandum from the Office of
5 Planning dated February 28, 2003.

6 CHAIRPERSON MITTEN: Okay.

7 MR. McKEON: Page 3, section 7. On
8 January 24th of this year, the Zoning Commission
9 advertised in the Washington Times that the W-0 Zone
10 could apply to Reservation 343 or Parcel 169.
11 Reservation 343 is owned exclusively by the National
12 Park Service. Parcel 169, Lot 111 is owned by WMATA
13 and Pepco.

14 The Legacy Plan of the National Capitol
15 Planning Commission comprises Phase 1 of Washington
16 Waterfronts. On Page 15 of Phase 1, NCPC calls for
17 the opening of a working boatyard and marina on the
18 west side of the Anacostia where the former Anacostia
19 Marina was located. The proposed regulations
20 contravene such planning of federal interests since
21 the reinstallation of such boatyard and marina would
22 no longer be by right.

23 In Crystal Bay Marina v. Sweden, 939,
24 Federal Supplement 839, the Court held that a local
25 zoning ordinance, as applied to a marina on federal

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1 land is preempted by the Supremacy Clause of the
2 United States Constitution. Among the powers
3 unconditionally delegated to Congress by the Property
4 Clause of the U.S. Constitution is the authority to
5 control occupancy and use of public lands. Pursuant
6 to the National Park Service Concessions Management
7 Improvement Act of 1998, the National Park Service is
8 expressly permitted to lease or allow occupancy of its
9 land for uses as regulated by the NPS Act.

10 Therefore, the proposed regulation as it
11 is intended to apply to Reservation 343 or any other
12 National Park Service land is preempted by federal
13 law. I also would like to add that when they talked
14 about Parcel 169, Parcel 169 is landlocked. It abuts
15 Reservation 343. If the Zoning Regulations can't
16 apply to Reservation 343, then why apply a Waterfront
17 Zoning Regulation to landlocked land? That doesn't
18 make any sense.

19 The proposed regulation cannot be applied
20 to the Southwest Waterfront due to notice defects in
21 the Washington Times advertisement. If this zone were
22 to apply anywhere else, then interested parties will
23 not have been afforded an opportunity to comment and
24 participate in a regulatory process.

25 CHAIRPERSON MITTEN: I need you to wrap it

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1 up, Mr. McKeon.

2 MR. McKEON: Okay. In the instance of
3 fairness, it shouldn't apply to southwest. In the
4 other paragraph, I talk about spot zoning. I wrote I
5 talked to Uvey Brandis of the Office of Planning. I
6 asked him if he intended to apply it to southwest. He
7 goes no. Do you still plan on testifying? I said
8 yes. So I emailed him. He is pretty good about
9 emailing, so I emailed him and I said, please, tell me
10 you don't intend to apply this to the Southwest
11 Waterfront. No response. It has been over a week.

12 In their December memo, as Mr. Johnson
13 stated, they stated specifically that Southwest
14 Waterfront was on the mark for a W-0. I believe that
15 they are after spot zoning, and I just can't believe
16 it, and it is killing our property values. We have
17 lost the tenant that was very dear to us, and this is
18 just -- we have a picture of our building, of our
19 site, on their website right now as demolished. How
20 are we going to get another tenant? How long is
21 Hogate going to stay vacant? How long is the
22 waterfront going to go down?

23 CHAIRPERSON MITTEN: Okay.

24 MR. McKEON: Thank you.

25 CHAIRPERSON MITTEN: Thank you, Mr.

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1 McKeon. And Ms. Raup?

2 MS. RAUP: My name is Marian Raup. I am a
3 member of the Capital Yacht Club. In fact, I serve on
4 the board of directors. I have been active in the
5 waterfront community for six years and I am a resident
6 of the District. I largely support what has been said
7 here prior to tonight, and I won't take up your time
8 with repeating it.

9 I have three quick points that I do want
10 to make. We're concerned, as Bob just said, we're
11 concerned about spot zoning. We're concerned that
12 this is an inappropriate zoning to be applied to our
13 area and we're afraid that it's just a ruse to deflate
14 property values and, essentially, take our property.

15 The second concern we have is that I'm not
16 sure that there is sufficient funding for all the
17 projects that are being proposed for this, and I think
18 it would be a real tragedy to take over the property,
19 demolish what is there and then not have the funding
20 to go further.

21 And then lastly, I want to support what
22 has been said previously tonight about the live-aboard
23 community. I would like to see the live-aboard
24 density left up to the individual marinas and yacht
25 clubs and not to be regulated through zoning by any

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1 other outfit and, please, don't differentiate between
2 marinas and yacht club with respect to live-aboards.
3 Thank you.

4 CHAIRPERSON MITTEN: Okay. Thank you.
5 Any questions for these folks?

6 MS. MCKEON: Can I make a clarification?

7 CHAIRPERSON MITTEN: If you turn on your
8 mike, you can,

9 MS. MCKEON: Oh, I got so busy talking
10 about my beautiful boat, I forgot to --

11 CHAIRPERSON MITTEN: I wish you had
12 brought a picture, because I don't know boats, so
13 anyway.

14 MS. MCKEON: It's classic, great lines.

15 CHAIRPERSON MITTEN: Okay.

16 MS. MCKEON: But looking here when talking
17 about whether or not federal land applies, perhaps we
18 could all go home and have dinner if it turned out
19 that this, the W-0 Zone, could not be applied to the
20 yacht club, because we do sit on federal property that
21 we have leased. And if somebody could clarify whether
22 or not this is the case, because what we are reading
23 is if this land is leased and contains a private
24 enterprise, and this was written by the Department of
25 Planning --

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1 CHAIRPERSON MITTEN: Right.

2 MS. MCKEON: -- that it does apply.

3 CHAIRPERSON MITTEN: That's correct.

4 MS. MCKEON: And therefore, it does also
5 apply to Tommy Long's Marina. It does also apply to
6 the Gangplank.

7 CHAIRPERSON MITTEN: It's only if uses are
8 changed. I think I said this earlier in response to
9 someone's concern. If there are private uses on
10 federal property and those uses are not changing or
11 expanding, then the status quo applies. There is no
12 application of zoning. But in the event that someone
13 wants to expand such a use, zoning would be put in
14 place and it would be applied to that expansion.

15 MS. MCKEON: So this would apply to Tommy
16 Long's Marina, because they are talking about
17 significantly changing what was there?

18 CHAIRPERSON MITTEN: Presumably, yes. No?
19 Mr. Parsons is saying no.

20 COMMISSIONER PARSONS: Because it will
21 continue to be federal property.

22 CHAIRPERSON MITTEN: But what about the
23 private use?

24 COMMISSIONER PARSONS: It's a concession
25 of the National Park Service.

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1 CHAIRPERSON MITTEN: Well, that is some
2 kind of -- well, it actually is true.

3 COMMISSIONER PARSONS: It's a contract of
4 a relationship.

5 CHAIRPERSON MITTEN: Yes, right, it's
6 not --

7 COMMISSIONER PARSONS: It's not an
8 interest in land.

9 CHAIRPERSON MITTEN: Yes, it's not a
10 lease. It's a concession and there is some kind of
11 legal distinction, I believe.

12 COMMISSIONER PARSONS: Yes.

13 MR. MCKEON: Madam Chair, may I just ask
14 one thing?

15 CHAIRPERSON MITTEN: You got to remember
16 we're not lawyers, and so --

17 MR. MCKEON: I just want to say --

18 CHAIRPERSON MITTEN: I am guessing you
19 are.

20 MR. MCKEON: Yes, and I do know that
21 sometimes -- I am not going to -- the notice that they
22 published, and that was published January.

23 CHAIRPERSON MITTEN: Right.

24 MR. MCKEON: It said Reservation 343.

25 CHAIRPERSON MITTEN: Right.

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1 MR. MCKEON: Parcel 169.

2 CHAIRPERSON MITTEN: And as I said to Mr.
3 Johnson, that was published in error. That was a
4 mistake.

5 MR. MCKEON: But that's a public notice,
6 and now people are --

7 CHAIRPERSON MITTEN: And that's why we had
8 to reschedule. That's why we had to reschedule,
9 because it was renoticed. This hearing was renoticed.

10 MR. MCKEON: It was renoticed on January
11 24th, right?

12 CHAIRPERSON MITTEN: No, it was renoticed
13 after that. Isn't that correct, Mr. Bastida?

14 MR. MCKEON: February?

15 MR. BASTIDA: Madam Chairman, let me give
16 the gentleman a copy of the revised notice of hearing,
17 which, in fact, does not include any specific site and
18 they are actually by the door, and if there is none
19 available, I will be glad to print one for you.

20 MR. MCKEON: Well, if the newspaper ad is
21 a required notice to the public --

22 MR. BASTIDA: Sir, it was revised. That
23 means that the hearing was canceled, because of
24 inappropriate noticing.

25 MR. MCKEON: Okay. Was the newspaper ad

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1 readadvertised?

2 MR. BASTIDA: Yes, it was.

3 MR. MCKEON: I didn't notice that in the
4 file jacket.

5 MR. BASTIDA: I would have to find why,
6 but there are several ways to advertise. One is
7 sending notices to people within 200 foot, I mean, to
8 all the ANCs and making one notice.

9 MR. MCKEON: But when your regulations
10 require you to advertise in the newspaper, do you --

11 MR. BASTIDA: Sir, that was actually
12 amended and it's since 1999, it's not required.

13 MR. MCKEON: Okay.

14 MR. BASTIDA: Okay?

15 MR. MCKEON: All right. And one thing I
16 want to add is if it were to apply, if you can't zone
17 NPS lands and they don't intend to apply it to
18 southwest, where is it going to apply, Parcel 169?
19 That's landlocked. Why put a W-0 Zone on 169?

20 CHAIRPERSON MITTEN: I think we got your
21 point.

22 MR. MCKEON: Okay. Thank you.

23 VICE CHAIR HOOD: Madam Chair, let me just
24 ask. I guess I may need to go sit down in there. The
25 exchanging was between you and Mr. Parsons. Now, I

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1 have gotten confused, so I am going to ask that the
2 corporation counsel expound on this on page 3 a little
3 bit more to us, so I can make sure I'm clear.

4 CHAIRPERSON MITTEN: All right. That's
5 good.

6 VICE CHAIR HOOD: Thank you.

7 CHAIRPERSON MITTEN: Thank you.

8 MS. RAUP: Madam Chairman, could I make
9 one last comment? I am looking at these beautiful
10 pictures of the waterfront here that are being
11 displayed, and the last picture that has a boat in it
12 and some waterfront isn't in D.C.

13 CHAIRPERSON MITTEN: Okay.

14 MS. MCKEON: Where is that?

15 MS. RAUP: Pardon me?

16 CHAIRPERSON MITTEN: None of them are
17 we're being told. Although, the Cherry Blossoms look
18 kind of familiar.

19 MS. RAUP: Yes.

20 CHAIRPERSON MITTEN: And those ducks, I
21 have seen those ducks. Okay. Thank you. G.W. Sima,
22 Siwa, it looks like S-I-W-A or S-I-M-A. Okay. Sam
23 Sharkey, it sounds like a good name if you live on the
24 water. I have an A. Donahue and a J. Donahue.

25 MS. DONAHUE: Janet Donahue, I will not be

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1 speaking.

2 CHAIRPERSON MITTEN: Thank you. John
3 Goodrow, again another good name for the water,
4 Goodrow, there you go. Good evening, Mr. Sharkey.

5 MR. SHARKEY: Good evening.

6 CHAIRPERSON MITTEN: How are you tonight?

7 MR. SHARKEY: Older.

8 CHAIRPERSON MITTEN: Me, too, me, too.

9 MR. SHARKEY: I am the official old fogie
10 of the club. I am only 88, so I got a little ways to
11 go to reach puberty.

12 CHAIRPERSON MITTEN: I'm sure the girls
13 are excited.

14 MR. SHARKEY: I'm going to be very brief.
15 I don't think I will go over what anybody else said.
16 That's why I threw away my manuscript. Last night I
17 was counting as the Planning Board kept talking about
18 access to the waterfront. They used that word. I
19 stopped counting after they reached 50.

20 Now, they are going to put up a 12 story
21 apartment house. They are putting up a couple of nine
22 story buildings and a couple of five to six story
23 buildings, and that is granting access when we now
24 have two story buildings. That seems to be very, very
25 contrary, and most of them are going to be apartment

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1 houses. Can you imagine what the rent is going to be
2 on a prime location like that? You're talking minimum
3 \$3,000 for a one bedroom apartment.

4 That doesn't very much help the community,
5 the old fashioned community we have had here that's
6 been an integral part of the southwest, and I think
7 that is very opposite to what should be done down
8 there. I guess that's about all I can think of.

9 CHAIRPERSON MITTEN: Okay. Thank you, Mr.
10 Sharkey. Mr. Donahue?

11 MR. DONAHUE: Thank you. What I have left
12 after what has been covered by so many other people, I
13 have bits and pieces, so I will dive into them. The
14 beginning of the presentation by Mr. Lawson, I
15 believe, emphasized the value of trying to improve the
16 waterfront recreational area for maritime purposes.

17 When you look at the maritime purposes in
18 this area, it goes from canoes to mega-yachts. It
19 isn't just sculling and it isn't just runabouts, 26
20 foot runabouts. There is a tremendous breadth of
21 types of vessels that come in here. Many of them stay
22 here.

23 However, the Capital Yacht Club is the
24 host to the mega-yachts that come here to visit this
25 city, both the diplomats and for the lobbyists and for

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1 the wealthy and for the individuals who have decided
2 to explore the world on their 60 or 70 foot yachts
3 instead of the 150 to 200 foot yachts that we have
4 coming in here.

5 We are charged, Capital Yacht Club is, we
6 are charged with providing a recreational maritime
7 facility for the District of Columbia. Our mission is
8 to be the managers of all transient vessels coming
9 into our yacht club. It is a lease that we have with
10 the District of Columbia. It came out of the fact
11 that we lost this land when we owned it for so many
12 years. We lost it and then we had to fight to get it
13 back.

14 It took us until two years ago to pay off
15 the mortgages for the yacht club building that we had
16 to put back in there after the last one was demolished
17 by whatever terms you want to us, taking, eminent
18 domain, whatever. So we have been subjected to this
19 before, and we're very gun-shy about this whole thing.

20 That's why so many people here are emphasizing
21 whether or not W-0 can be used against us, because it
22 was before in another life.

23 We are also concerned that the people who
24 hold our lease, the District of Columbia, it used to
25 be the RLA, are the same ones who are now involved in

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1 this comprehensive plan. What is it, the NCRC?

2 CHAIRPERSON MITTEN: Yes.

3 MR. DONAHUE: They hold our lease. They
4 have the prerogative to exercise whatever they choose
5 to do with your plan to move us out of there when they
6 feel like it. They can break that lease for their
7 benefit, and their benefit seems to be wrapped around
8 that very large comprehensive plan down there, which
9 as we have mentioned several times does not show the
10 Capital Yacht Club anywhere in the facility, in the
11 arena.

12 CHAIRPERSON MITTEN: You need to wrap up
13 now, Mr. Donahue.

14 MR. DONAHUE: All right. So we're asking
15 you to consider the fact that we have a reason to be
16 concerned, and it isn't just because we worry about
17 the Planning Board. We worry about the developers who
18 see multi billion dollars collecting down there while
19 we're just running a small yacht club.

20 CHAIRPERSON MITTEN: Thank you. And, Mr.
21 Goodrow, you seem to be from a different place, WCC?

22 MR. GOODROW: Yes, the Washington Canoe
23 Club.

24 CHAIRPERSON MITTEN: Okay.

25 MR. GOODROW: Madam Chair --

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1 CHAIRPERSON MITTEN: You will have five
2 minutes if you need, if you would like.

3 MR. GOODROW: I don't think I need that.

4 CHAIRPERSON MITTEN: Okay.

5 MR. GOODROW: And I also wish I was a
6 proponent, not an opponent. First, I would like to
7 say that I would like to have on the wording no
8 exclusive use exemptions. The problem that I have is
9 the same as Mr. Hannaham has, and that is I am not
10 sure what a marina is and I am not sure what a
11 boathouse is.

12 I was at Princeton and Princeton has a
13 boathouse. I should say it has a boat mansion, a
14 coach's quarter, assistant coach's quarters. It has a
15 kitchen that can feed 100. It has an erg room, weight
16 room, center room, steam room. So is it a boathouse,
17 a spa, a restaurant or a residential house with a
18 river view? Do you know what the definition is? My
19 garage has a canoe in it. Do I park my car in my
20 boathouse?

21 The next thing I would like to talk about
22 is the 20 foot easement. I think the 20 foot easement
23 for safety and security of the river is really
24 important to maintain. I would like to see it
25 increased. James Woodworth who came and talked about

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1 the needs for a setback and protecting the river from
2 runoff was convincing, and with a concept that the
3 Department of, I guess it was, Interior has guidelines
4 for such, I think we should actually look into that
5 also.

6 I would also like to say that Washington
7 is best known for its rivers and its parks, and I
8 would like an easement also from the parks. When we
9 give property to a private concern, I think we should
10 have the public's right of way on the park protected.

11 So I think we should have an easement from the park
12 land to any type of building or construction that is
13 being done on the property that is being given into
14 private hands.

15 We met with the National Park Service in a
16 very serious and inclusive discussion on their vision
17 of the W-0 and the Washington Canoe Club does support
18 that W-0 Zoning, and I would like to say that I am not
19 sure after hearing that the National Park Service is
20 going to keep in their records a perpetual covenant.

21 I am not sure what the perpetual covenant
22 is, as opposed to a W-0 Zoning. Does that mean that
23 the zoning does not have to be done? That is
24 basically all I have to say.

25 CHAIRPERSON MITTEN: All right. Thank

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1 you. Any questions? All right. Thank you,
2 gentlemen.

3 MR. GOODROW: Okay. Thank you.

4 CHAIRPERSON MITTEN: Is there anyone else
5 who would like to testify? Anyone else who would like
6 to testify in opposition or at all?

7 MS. DeWEES: Can I just ask the Court,
8 just give my name and ask the Court?

9 CHAIRPERSON MITTEN: I'm sorry? Why don't
10 you come forward and just put your question on the
11 record?

12 MS. DeWEES: My name is Pam DeWees. I am
13 also a member of Capital Yacht Club. I have been
14 boating for 15 years. I just wanted to say that I
15 support the testimony given by Commodore Guy Nolan and
16 ANC Commissioner Ed Johnson.

17 CHAIRPERSON MITTEN: Thank you. Did you
18 fill out two witness cards?

19 MS. DeWEES: Yes.

20 CHAIRPERSON MITTEN: Make sure the
21 reporter gets them. And, sir, what is your name?

22 MR. MILLER: My name is Chris Miller. I
23 am a member of the Capital Yacht Club also. I have
24 been a member for 11 years and had boats on and off
25 the water during that time. I gave some testimony

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1 out. I won't bother to read it. I know you have
2 heard most of it four times. So I just would like to
3 make a couple of points for your consideration. They
4 are relatively specific, I hope.

5 First, Madam Chair, you mentioned, you
6 know, when your use changed. What concerns me a
7 little bit, and maybe I am out of line here, but with
8 the NCRC making changes to the environment, if they
9 displace us, if they move us, if they give us another
10 facility, I am afraid that that's going to trip some
11 kind of a clock or a change clause in this zoning,
12 which then would allow us to become subject to things
13 we weren't subject to before. In other words, I
14 understand that we are a continuing use, but that
15 might change. I think some provision has to be, at
16 least, it has to be thought of and some provision has
17 to made for that.

18 Second, I would like to make sure that non
19 boaters in the audience understand the difference
20 between pleasure boats and business boats. You know,
21 there are some people in the back that run business
22 boats for hire and they certainly have certain
23 regulations that are Coast Guard and District
24 enforced, and they have what you would call, I guess,
25 a Certificate of Occupancy for the boat, which is

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1 perfectly appropriate.

2 Pleasure boats don't have that. Pleasure
3 boats dock, which most of us in the yacht club have.
4 Pleasure boats dock at a dock and we use that dock as,
5 essentially, a place to tie up. We don't get a
6 Certificate of Occupancy. We have never gotten a
7 Certificate of Occupancy. I don't believe there would
8 be a way to use a Certificate of Occupancy.

9 So any regulation that zoning puts out
10 must take that difference into consideration. We
11 can't write language around COs, because it's not
12 going to work. Now, certainly, the club can have a
13 CO. That's a different issue.

14 Third, as we have made many, many times
15 the point tonight, we don't want this thing to apply
16 to the southwest and everybody says it's not going to
17 apply to the southwest and I gather for two reasons,
18 one, because we're on federal land. Although, perhaps
19 that could be changed, because whether we're a lease
20 or a concession, I don't know how all that works, I'm
21 not an attorney, and we have a good one working on
22 that.

23 But I guess what I am saying is is why
24 can't you put something in the law that says if you
25 are at a higher density, you can't be downsized unless

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1 you agree with it? I mean, we're at a relatively high
2 density in the southwest now. Whatever that
3 equivalent is, I don't know. We don't want people
4 coming in there putting us at a W-0 and taking our
5 property away. So put some provision in there that
6 says that can't happen. You know, just don't be
7 allowed to downsize us unless we agree with it.

8 And lastly, and I don't mean to attack the
9 Park Commission, but I do want to make a point.
10 Somebody mentioned earlier about how well the Park
11 Commission is going to handle the private lands. I
12 don't know if you people understand how important it
13 was when Tommy Long went out of business.

14 My boat, which is a 43 foot boat, moves at
15 about eight miles an hour. If I haul that boat, I
16 have got five to six hours down the water before I can
17 get it pulled out. Now, you talk about pollution, you
18 talk about safety issues, I can't get that boat out of
19 the water.

20 CHAIRPERSON MITTEN: You need to wrap it
21 up now, Mr. Miller.

22 MR. MILLER: Okay. Sorry, I didn't
23 realize I did my three. So all my point is is that we
24 need to have responsive facilities here that can react
25 to those kinds of things. We were promised to Tommy

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1 Long awhile ago. We don't have it yet. I don't think
2 we need to put more authority into that.

3 CHAIRPERSON MITTEN: Okay. Just hold your
4 seat.

5 MR. MILLER: Yes, ma'am.

6 CHAIRPERSON MITTEN: And I am assuming
7 you're Ms. McKay?

8 MS. MCKAY: Yes.

9 CHAIRPERSON MITTEN: Okay.

10 MS. MCKAY: I am a member of Capital Yacht
11 Club and have been part of the waterfront community
12 for almost 10 years also at Gangplank Marina, as well.

13 I am also a teacher of English to adults from many
14 countries, and I don't know if -- I mean, there is
15 lots of words being thrown around tonight, but one of
16 the words you're going to keep hearing is transients,
17 and cruising transients are boaters that come in and
18 want a place to dock and they want to see the city,
19 and we give them that opportunity.

20 11 DCMR 917.1 proposes to stop yacht clubs
21 from renting slips to transients. Now, on the
22 Southwest Waterfront, the Capital Yacht Club is the
23 facility than can offer appropriate services to these
24 transients. Since the Gangplank is now under the
25 control of the NCRC, I am sure the NCRC would enjoy

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1 increasing their revenues by picking up our
2 transients, especially mega-yachts like Forbes and
3 Eric Clapton as was mentioned earlier since we're name
4 dropping.

5 However, the current lack of facilities
6 and maintenance at Gangplank would be very
7 discouraging to incoming transients, whether they are
8 mega-yachts or small sailing vessels, unfortunately.
9 I am a teacher. It's my job to be an ambassador every
10 day I go in the classroom. My students see me as an
11 American.

12 Many, many people come and dock at Capital
13 Yacht Club and they see us as ambassadors. We open
14 our doors. We welcome them to fun, food, lots of
15 stuff. They come in. They enjoy using our computers.
16 They enjoy using our bar facilities. They enjoy
17 shooting darts, lots of things, and if we're not
18 there, they're not coming.

19 We get thank you notes all the time to let
20 us know that we are special ambassadors for the City
21 of D.C. and the country. I have met people from all
22 over the world sitting in the yacht club or walking
23 along the waterfront that are docking in our facility.

24 There is no valid reason in public policy to exclude
25 Capital Yacht Club or any other yacht club from

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1 welcoming transient vessels into our city and country
2 as we have done for a century.

3 CHAIRPERSON MITTEN: Thank you. Any
4 questions for these folks? All right. Thank you
5 both. Okay. Last call, anyone else? Okay. Mr.
6 Bastida, let's talk about dates to close the record.

7 MR. BASTIDA: Madam Chairman, what would
8 you like, two weeks or three weeks?

9 CHAIRPERSON MITTEN: Let's say three.
10 Well, let's say two.

11 MR. BASTIDA: Okay.

12 CHAIRPERSON MITTEN: Where is three going
13 to put us? Wait, let me see. What is three?

14 MR. BASTIDA: It would put it on Friday,
15 April 4th.

16 CHAIRPERSON MITTEN: Oh, that would be
17 fine.

18 MR. BASTIDA: Yes.

19 CHAIRPERSON MITTEN: Okay.

20 COMMISSIONER PARSONS: Madam Chairman, I
21 want to make a couple of remarks here.

22 CHAIRPERSON MITTEN: All right.

23 COMMISSIONER PARSONS: I am very, very
24 troubled by tonight's hearing. It's, to me, a low
25 point in my tenure on this Commission, because the

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1 error that we made in improper notice threatening
2 certain areas of the city, or that's the way it was
3 perceived, has set up the concern by so many folks
4 here tonight that there is some hidden agenda here and
5 there isn't.

6 And what we have turned this into is a
7 group of very concerned people of the Capital Yacht
8 Club, and I am very familiar with their history. They
9 had a very difficult time in an urban renewal process
10 of many years ago, and they think it's coming again,
11 and they think we are some kind of cult that's going
12 to help them with that, and I want them to know we
13 aren't.

14 It's the National Capital Revitalization
15 Corporation who is the one that is in charge of their
16 future, and I cannot imagine that corporation or
17 anybody associated with it that doesn't understand or
18 appreciate what this yacht club has done for this
19 waterfront. And to have them as a community, and
20 that's what they are, feeling threatened is wrong.
21 It's just wrong and I am going to do anything I can to
22 stop it, because they need to be put to comfort, so
23 that they will be productive in this community as they
24 always have been instead of in this terrible state.

25 And I want to apologize to you. It's not

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1 my fault, but I am going to help you, and it has
2 nothing to do with zoning. It's just my care for them
3 and what's going on in this planning process. Thank
4 you.

5 CHAIRPERSON MITTEN: Thank you, Mr.
6 Parsons.

7 (Applause)

8 CHAIRPERSON MITTEN: A good note to end
9 on. I would like to thank you all for coming down and
10 it's great to hear about your community. Living on a
11 boat is not something I am familiar with, so it's
12 really interesting to see all the folks and to hear
13 about the community you have built down there.

14 As Mr. Bastida said, the record in this
15 case will be closed on Friday, April 4th at 3:00 p.m.,
16 so any additional information that you or your
17 neighbors would like to submit, do so by that time.
18 We will then make a decision on this case at one of
19 our regular monthly meetings following the closing of
20 the record.

21 These meetings are held at 1:30 p.m. on
22 the second Monday of each month. Usually, that's the
23 schedule, we occasionally change that, and they are
24 open to the public, so you're invited to come back.
25 If anyone is interested in following the case further,

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1 you can contact Mr. Bastida to find out when the case
2 will be on the agenda for decision making.

3 You should also be aware that should the
4 Commission propose affirmative action, the proposed
5 action must be published in the D.C. Register as a
6 proposed rule making allowing a period of time for
7 comments. In addition, the proposed rule making will
8 be referred to the National Capital Planning
9 Commission for federal impact review. Public hearing
10 adjourned.

11 (Whereupon, at 9:52 p.m. the hearing was
12 adjourned.)
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